



THE FIRST FARE OF BIRKENHEAD  
*(Portrait by Hay Wright on.)*

# FAMOUS TRIALS

By The First  
EARL OF BIRKENHEAD

P.C., G.C.S.I., D.L., D.C.L., LL.D., B.LITT.

*Lord Chancellor of England 1919-1922*

WITH 41 ILLUSTRATIONS

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*I dedicate this book to Sir Edward  
Clarke, and, in doing so, recommend  
his standard and methods of advocacy  
to young gentlemen fitting themselves  
for practice at the Bar.*

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## PREFACE

**F**REDERICK EDWIN SMITH, first Earl of Birkenhead (known to his contemporaries as 'F.E.'), had a brilliant career at the bar and in politics, culminating in his appointment as Lord Chancellor at the early age of forty-six. He might equally well have made a name for himself in literature. Two of his books, *Famous Trials of History* and *More Famous Trials*, ran into many editions within a few months of publication. They are now made available for the first time in a single volume at a popular price.

As lawyer, as craftsman in words and as student of human nature Lord Birkenhead is equally master of his materials. Here is mankind under the microscope, the raw material of fifty novels fashioned into glittering gems of narrative and character-drawing. With equal skill he unravels the complex threads of famous criminal and civil cases, in many of which he himself played a leading role. His grasp of the subject is so complete, his style so readable that the most involved legal processes become clear to the lay mind. In this book the drama of the law through three centuries is presented with a brilliance that has never been surpassed.



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# *The Trial of Mary Queen of Scots*





## THE TRIAL OF MARY QUEEN OF SCOTS

THE trial and execution of Mary Queen of Scots form the culmination of her long rivalry with Elizabeth. Fate brought the two women into inevitable conflict, and their struggle, commenced with almost equal chances, forms a record of intrigue on both sides in which the less skilful player, always with the inferior hand, gradually lost the advantage and paid the forfeit with her life.

The story is a long one. Even before she took refuge in England in 1568, Mary had challenged her cousin's right to the throne, and her escape from Scotland added one more difficulty to the many that beset Elizabeth and England.

The English Queen had reigned for nearly ten years. As the daughter of Anne Boleyn, she was regarded by many worthy people as illegitimate and therefore a usurper. To this she added the additional disqualification that she favoured the Protestant settlement. Her legitimacy had been affirmed by statute, but a status thus acquired could, if circumstances allowed, as readily be disaffirmed, especially if the Pope decided, as indeed he did later, to release all Catholics from any religious obligation to render her allegiance. She had a perilous upbringing. While yet an infant her mother had fallen a victim to her consort's suspicious jealousy. When Edward VI succeeded she was growing to a marriageable age and was coveted as a pawn in the game by ambitious men. Delivered from more than one particular peril by Edward's early death, she encountered thereafter worse dangers. She could not but be an object of dislike and suspicion to her sister, to whom she was a living reminder of the wrongs done to the unfortunate Catharine of Aragon. Yet, if the union of Philip and Mary proved sterile, as it did in fact, Elizabeth was the obvious successor to the Crown. As such, her name could plausibly be used by any rebel bidding for popular support. When Wyatt's rebellion broke out, she was suspected of complicity and for a time in the gravest peril of life. Throughout the reign of Philip and Mary she was under close surveil-

lance. Spies scrutinised her every act, and had she made a false move, it would probably have sealed her doom. It is small wonder, having regard to her wonderful education and her natural abilities, which included all the Tudor aptitude for dissimulation, that her early life made her a mistress of intrigue, while weakening in the process her perception of principle.

When, after Mary's short reign, Elizabeth ascended the throne, a new era seemed about to dawn. But clouds threatened storms from many quarters. To steer a safe course between the shoals demanded the highest skill and the keenest foresight. It was to that task that Elizabeth thenceforth devoted her dominating life.

The first and perhaps the most fateful problem was as to the form of religion. Henry's changes had divorced the realm from Catholicism without making the people Protestants. But for the bigotry with which schism was attacked in the reign of Mary, it might have been possible to reunite England permanently to Rome. When Elizabeth succeeded, it was too late; the general sense of the nation had definitely hardened against union with Rome. The decision had to be taken at once, and by that decision the second change of religion within a few years was brought about, and the Church of England had to be built anew. This threw the Catholics into opposition. It made many hypocrites, for now numbers made their second or third *volte-face* according to the solution favoured by the Government for the time being. As time wore on and Catholics in the Continent made their plots against the Queen, the repressive legislation turned almost every English Catholic into a potential rebel, while numbers who conformed to the Established Church were ready on a change of fortune to make a fresh recantation. It was not easy to choose an adviser upon whom to rely; the period is remarkable for the facility with which information could be obtained from men on whom no breath of suspicion could seem rightly to rest. Traitors swarmed round every Court.

The four countries with which England had to reckon were Spain, France, Scotland and Ireland. The Spanish monarch had only just ceased to rule in England. As a descendant of John of Gaunt, Philip II had claims to England, which were only less strong than those of a few others. It is perhaps due to the fact that the nearest of these, Mary Queen of Scots, was

the wife of the Dauphin that Philip allowed Elizabeth to succeed without a struggle, contenting himself with the suggestion of himself as her husband. Spain was the source from which the Counter-Reformation took its origin. She appeared to be the strongest European power. Few then realised how fatal it was for her, with a new world fallen to her share, to have warred against the Moors, the Jews and the Protestants in Spain ; and thus, at a time calling for the greatest national effort, to have deprived the realm of the flower of its wealthy, industrious and labouring classes. Not content with that, the King had roused his subjects in the Netherlands, and turned a race of scamen into enemies. Had they been kept loyal, the history of England would have been different.

France was also a danger. Mary and her husband had assumed the style and arms of King and Queen of England. Less strong apparently than Spain, three factions within the realm were striving for the mastery. United to France, England would be an invaluable support. In the hands of Spain, she might prove a fatal enemy.

Scotland had passed through a phase of Reformation more sweeping than in England. She was distinctly a Protestant power, but her Queen was Catholic, the relations with France were of the closest, and if the turn of events threw France and Scotland together against England, the attack might well come from two quarters at once.

Ireland, unlike the other three countries, was part of the English dominions. She had not adopted the Reformation, and was more in the position of a conquered country held by a garrison against a hostile population than a source of strength. Any power that could hold the sea could land in Ireland and be sure of support against England.

Amid these dangers Elizabeth walked warily. She was compelled to play for time. When problems called for urgent solution, every way out might prove to be the path into other and worse perils. To put off the evil day, to "wait and see" whether events would not bring about the safest decision was the policy to which she adhered, even in cases where that policy was the least wise of those that offered. When she ascended the throne, England had lost prestige ; the people were divided ; difficulties were great ; counsellors deceitful. It is her glory that she lived to be the head of a united nation which had taken its true place in the world.

One of her most difficult problems was the succession. Unless she married and had issue, there was no obvious successor. It is significant that there always was a doubt whether any of the numerous marriage negotiations was really serious. To offer the chance of matrimony to those who coveted her throne was an obvious method of preventing them from resorting to force. The fact that she could bestow her hand to a prince of a rival power was a potent reason for each of the contending powers to refrain from declaring war upon England. The realm was safer with her alone, but marriage might be a small sacrifice if an ally were urgently needed. But unless she produced a child, then Mary Queen of Scots was the nearest of the possible claimants. Parliament from time to time urged Elizabeth to name a successor, but she declined, perceiving clearly that such a successor might rise in rebellion against her, or else, if a more remote one were preferred, her choice might provoke a nearer expectant heir to try the fortune of war. In all her measures, Elizabeth, from the commencement of her reign, had always to take into account Mary Queen of Scots.

That ill-fated Queen had succeeded her father, James V, Elizabeth's cousin, when a babe a week old. In her tenderest infancy Henry VIII had coveted her for his son, and had sent an army into Scotland to seize her. He failed, but the attempt caused her to be sent to France at the age of six. She was brought up with the French royal family as a Catholic, and at that Court witnessed the disputes and intrigues of the three contending factions, a bad training for a child as true a Tudor as Elizabeth herself. She naturally lost all touch with Scotland, where during her absence, in the most impressionable years of her life, the Scottish people passed through a bigoted Protestant movement. When sixteen she married the Dauphin and her future seemed bound up in France. On Elizabeth's accession she became at once a menace. Her succession at that date would have added strength to the French, and Spain could not allow it. Soon, however, her husband died and in August, 1561, she returned to Scotland alone, a stranger in her own country. Her subjects were in no mood to accept her rule. They were fierce, turbulent and grasping, and she was alien in religion and sympathy. She might and did gain the love and devotion of a few, but she failed, unlike Elizabeth, to put herself at the head of the national movement and

so unite the factions in a common loyalty to the throne. But in Scotland she was always a danger, and the turn of events might at any time enable her to strike a decisive blow. Her difficulties were accordingly enhanced by the English agents in Scotland. They were focuses of discontent and supplied fruitful sources of opposition.

It was soon obvious that she could not stand alone, and her marriage became a pressing question, in which Elizabeth's seeming opposition obtained a diplomatic victory. The chosen spouse was a Protestant, Henry Lord Darnley, whose claims to both thrones were not to be despised. Had he not been a headstrong, vain and foolish man, he might have afforded Mary the counsel and support this brilliant and beautiful woman so urgently needed. The Scottish nobility soon perceived his weak points, and, playing upon his jealousy, procured his estrangement from her by his participation in the murder of Rizzio in her presence. The breach, though sought to be concealed, was complete. Soon after their son James was born, he was murdered in circumstances which threw some suspicion upon Mary. Within three months of the murder she fell into the hands of the Earl of Bothwell, who married her in indecent haste and with doubtful legality. The opposing factions united to take up arms against this unnatural union and within a month she was a captive and he an exile. Abdication was imposed upon her; her infant son was proclaimed King; and she was imprisoned in Lochleven Castle. She seemed to have become negligible, but in the following year, 1568, she escaped. Her forces were defeated and she fled into England, where she appealed to Elizabeth for aid.

The English Queen was in a quandary. Mary was indeed in her power, but was a queen and no subject, and moreover had given no cause for a trial in England, even if a subject. While in England she must inevitably be a focus of rebellion. Out of England she would be beyond Elizabeth's control. The first step taken was to discredit Mary in the eyes of the world. A conference, called for York, though it afterwards adjourned to Westminster, was occupied from October, 1568, to January, 1569, in investigating the charges made against her by the Scots. Delegates named by Elizabeth met delegates from Scotland and Mary's agents. Elizabeth had the good excuse that she could not receive her until the charges were disposed of. The Conference effected nothing—perhaps it was never intended to;

but, when the Scottish delegates returned home, much dirty linen had been washed in public, and Mary's good name had been for all time besmirched. Whether she was rightly accused or not depends upon the authenticity of the Casket Letters. The historical mystery connected with them will probably never be solved, as they were not published and have disappeared. If they were hers and contained what was alleged, then she was guilty. No one can say with certainty, and she is at least entitled to the benefit of the doubt. Enough was done, however, to enable the Regent in Scotland to retain his power and to justify Elizabeth in keeping Mary at a distance. The unfortunate Queen remained in England a prisoner in the guise of a guest.

Her confinement lasted for eighteen long and poignant years. All that time her energies were devoted to attempts to escape from durance. She intrigued to supplant, or to be associated with, her son in Scotland; she strove to placate or overthrow Elizabeth; she appealed to France, to Spain and to the Pope for aid. Sometimes she seemed ready to change her religion. At other times her faith was the ground upon which she made her appeals. These appeals were the less readily listened to because her suggestion of a change of religion made her sincerity suspect. Nor did the European situation assist her designs. The Pope feared the Jesuits, who worked in favour of Spain; and, while France and Spain might come to blows over England, a united crusade for the faith was impossible. Besides, Spain was not ready. Though the wealth of America was flowing into her coffers, her economic position was precarious and Philip was forced, not merely to connive at the trade, but to encourage English food cargoes to come to Spain. The powers therefore rather preferred to await a successful plot in order to gather an advantage, if opportunity offered them, than to run the risks in which a decided course of action might involve them. Nevertheless, plot after plot was formed against Elizabeth, many of which had as the central idea the rescue of Mary and her accession to the throne. In 1570 the Pope excommunicated Elizabeth and thereafter her Catholic subjects were released from any religious obligation of allegiance. The first danger came when the Duke of Norfolk planned to marry Mary and thereby become the ruler of England. It is significant that while no one was sure that Elizabeth would ever marry, it was always assumed that Mary would, and she certainly had



[After Stothard

MARY QUEEN OF SCOTS RECEIVING FROM LORD BUCKHURST AND BFALE THE SENTENCE OF DEATH

See page 15





*From a painting after*

*[Sir J. Van Dyck]*

THOMAS WENTWORTH, FIRST EARL OF STRAFFORD

*See page 33*

no celibate prejudice. Perhaps she realised that she could not rule without a husband, and her experiences with the feeble Francis, the jealous Darnley and the brutal Bothwell had made her profoundly indifferent to the identity of a spouse for whom she was unlikely to feel the love of a wife for her husband. The Duke's plot was discovered and he was executed in 1572.

The machinations of the Catholic plotters continued, and the consequent repressive measures against them tended to drive all Catholics into opposition to Elizabeth. Protestants, too, were becoming embittered. The massacre of St. Bartholomew in 1572 caused them to be apprehensive lest they should share the fate of the Huguenots. Feeling was rising, and it was perceived that the assassination of Elizabeth would plunge the nation into the horrors of a disputed succession, which might lead to foreign invasion and the placing of a Catholic on the throne. Plot followed plot, and it was believed that Mary was not innocent of participation. She had not been discreet. She hardly could be. Once even, under the guise of reporting slander, she had written to Elizabeth detailing all the infamous stories she had heard about her. She did not trouble to conceal her opinion that she was unjustly kept from the throne by Elizabeth. In time that monarch, who had never been blind to the advantages that would accrue from Mary's death, was brought to believe that the disadvantages might not be so formidable as she had sometimes feared. Mary was the natural heir to the throne. She might marry, and then, if she had children, they would be Catholics. Legislation could deprive James of his heirship and England would then have a Catholic dynasty. On the other hand, if she were dead, all the claimants except Philip of Spain were Protestants. No Catholic would seek to dethrone Elizabeth for another Protestant. Few, if any, Englishmen would lend any countenance to schemes in Philip's interest. Meanwhile Elizabeth was in imminent danger, and those of her subjects who perceived that the continuance of Mary's life was a menace to them did not share their Queen's scruples. At last, when several assassination plots had been brought to light, Elizabeth's Ministers brought her to the opinion that if Mary gave just cause she would be justified in proceeding to the last extremity.

There were grave risks. The trial of a monarch was a threat to all crowned heads. James must inevitably be deeply offended at an attempt on his mother's life. Any king who

sought for an excuse for war could find one in such a trial. Unless Mary's complicity in treason was manifest, there was no justification or excuse, and even then there would be no small legal doubt whether any court had jurisdiction. Nevertheless events were moving to such a crisis that either Elizabeth or Mary would fall, and Elizabeth's advisers were determined that their mistress, having a powerful offensive in her hand, should not be the victim.

And now began the closing scenes of the tragedy. The nation was thoroughly roused, and at the news that a new plot had been discovered against their sovereign, began to act. In November, 1584, the Protestants of England formed an association pledged to defend and avenge her. By the Act of Association they bound themselves, their "bodies, lives and goods," to withstand "by force of arms as by all other means of revenge" all who should attempt to harm her. And if any such attempt should succeed they declared that they would never accept the successor on whose behalf the attempt was made, and would pursue the offenders to death.

The first Statute of the ensuing session of Parliament was an Act for the Security of Her Majesty's Royal Person (27 Eliz. c. 1). It provided means whereby a Commission of twenty-four Peers and Privy Councillors might be appointed to investigate any future conspiracy or attempt to bring about an invasion or rebellion or anything tending to the hurt of the Queen "by any person or with the privity of any person that shall or may pretend title to the Crown of this realm." If such Commission gave sentence or judgment against anyone, then upon proclamation of the sentence or judgment under the Great Seal two consequences would follow. First, that the claimant should be for ever disabled to have or succeed to the Crown, and secondly that anyone might lawfully put to death the person or persons declared to be guilty. The Act could only have been aimed at one person, and only one trial was held under it. Mary realised the object and offered to sign the Act of Association, but that, of course, was not allowed. Once the measure became law, Elizabeth, or maybe only some of her advisers, began to take steps to secure that the desired inquiry should have evidence to justify it. In 1585-6 Mary was at Chartley corresponding in cypher through her secretaries with foreign princes. Her object was to procure her release, and she was seemingly indifferent as to the means, if only they

proved effectual. She was prepared to cede to the King of Spain her title to the English throne, and apparently would have welcomed an armed invasion intended to set her free. But if the proceedings at her trial are to be believed, she also stooped to countenance treason and murder. Anthony Babington and his associates were plotting the assassination of Queen Elizabeth and the accession of Mary as a Catholic Queen, and they confessed that they had corresponded with the royal captive. These confessions, with the admissions of her secretaries, and copies of the incriminating letters, have been made known. Taken at their face, the evidence of her complicity in the plot is complete. Cecil and Walsingham had been watching the hatching of the plot and reading the letters as they passed. Some say, indeed, that Walsingham had organised the plot in order to accomplish his designs. At a convenient moment Babington and his friends were seized, tried and executed. By 21st September, 1586, the last of them had paid the penalty, and there remained one only, but that one the noble quarry, at last to be brought to bay.

Whether Elizabeth desired her rival's death, or was over-persuaded to sanction the various stages, is a question which, in all probability, can never receive an authoritative answer. That the necessary steps were taken, and taken with her sanction, cannot be denied. But even with evidence clearly pointing to Mary's guilt, there were serious doubts what procedure could be followed. Mary had been Queen of Scotland, and her abdication was a forced one, repudiated by her when she escaped from Lochleven Castle in 1568. It is the received doctrine that a foreign sovereign is immune from all process of law. If such a visitor violates the law, the proper remedy is to bring about his or her departure. If Mary was exempt, then the English Ministers were in a dilemma. To expel her would let loose upon the realm undefined but plain disasters. To retain her in custody, as she had been for eighteen years, would merely continue an intolerable situation. While in this country she was a prize coveted by every conspirator, and a counter of value to the diplomatists of neighbouring realms. If she were to survive Elizabeth, she, almost beyond doubt, would plunge England into civil war: almost certainly Scotland would involve herself, and the bait thus offered to France and Spain would be likely to prove too much for one or the other, if not both. Her death would cut this Gordian knot.

The lawyers were set busy. They pondered over the weighty questions whether Mary was a Sovereign, and whether as a Sovereign she could be tried by the State in which she happened to be. It was even suggested that the Queen of England as the feudal superior of the Scottish monarch, had jurisdiction over her, though Bannockburn had given a decisive negative to that contention nearly three hundred years before. The precedents were few and the writings of the learned of little value, but it mattered less. The legal answer was predetermined and the lawyers were merely engaged in finding reasons for upholding that answer, and not, as they should have been, in finding what the true answer was. It was averred, with some support, at least from common sense, that a monarch who abused the hospitality of another country by treasonable practices was amenable to the laws of that country. The flaw in the reasoning was twofold. First, Mary was a prisoner, and secondly the remedy is expulsion. Nevertheless, the conclusion that she was amenable to the jurisdiction was pleasing in the eyes of those who had the power, if not the right, to try her, and the way was clear for the next legal problem. With what offence and before what tribunal was she to be tried? It might be suggested that she was guilty of treason and could therefore be hauled before the appropriate Court for trying treason. The difficulties of that course are greater than would appear at first sight. Mary was not born a subject of the English Crown, nor had she sworn allegiance or been denized. She was not even voluntarily present in the country. Besides, who was to try her? She was not a peer, and yet, if not tried by the Lords, the only recourse was to a common jury, though she was of higher rank than a lord. But in England all accused persons were entitled to be tried by their peers, i.e., equals, and of her peers there was only one—Elizabeth herself. Obviously in taking advantage of the Act of Association and legalising an inquiry, Elizabeth's advisers had been finding a way out, and had avoided the glaring strain on the ordinary law which any other course would necessarily have involved. The Act was precise and clear.

Mary was arrested and taken to Fotheringhay in the custody of Sir Amyas Paulet. A Commission was issued to the Archbishop of Canterbury, the Lord Chancellor, Lord Burghley, the Marquess of Winchester, the Earls of Oxford, Shrewsbury,

Kent, Derby, Worcester, Rutland, Warwick, Pembroke, Leicester and Lincoln, Viscount Montague, Lords Howard, Hunsdon, Abergavenny, Zouch, Morley, Cobham, Stafford Grey of Wilton, Lumley, Stourton, Sandes, Mordaunt, St. John of Bletsoe, Buckhurst, Compton and Cheyney, Sir Francis Knowles, Sir James Croft, Sir Christopher Hatton and Sir Francis Walsingham, William Davison, Sir Ralph Sadleir, Sir Walter Mildmay, Sir Amyas Paulet and John Woolley, all the Commissioners being Privy Councillors, and to Lord Chief Justice Wray, Lord Chief Baron Anderson, Mr. Justice Gawdy and Mr. Justice Periam. Their task was set out in few words. It was alleged that, since the Statute was passed, Mary and others by her privity had engaged in conspiracy tending to Her Majesty's hurt and the Commissioners were to hear evidence and give sentence accordingly. There was no need for delay. The Commissioners included the Ministers who had prepared the case against Mary, and her gaoler. On 11th October, 1587, they arrived at Fotheringhay with their counsel and with documents, prepared for immediate action.

Queen Elizabeth had on the 6th written a letter informing Mary of the charge and intimating that as she lived within the Queen's protection, and thereby subject to the laws of the realm, she could be brought to trial and requesting her to answer the charge. Sir Amyas Paulet and a notary public waited upon her and delivered her letter. Having read it, she expressed her regret that the Queen should be misinformed and recalled that, after the Association and the Act confirming it, she had foreseen that, whatever happened, she would bear the whole blame, having, as she well knew, mortal enemies at Court. She then asserted that as a Queen she was not amenable to trial and would do nothing to prejudice herself or others of her rank or her son. She then complained that she was ignorant of the laws of England, did not know who were to be the judges, all her papers and notes had been taken and no man dared step forth to be her advocate, and ended: "I am clear of all crime against the Queen. I have excited no man against her and I am not to be charged but by my own word or writing which cannot be produced against me. Yet can I not deny but I have commended myself and my cause to foreign princes."

On the next day her answer was shown written down and ~~was~~ accepted it as accurate, but added that she did not enjoy

the protection and benefit of the laws of England since she had come into England to crave aid, and had ever since been detained in prison. Her denial of the authority of the Commissioners caused trouble, and some of the Commissioners, with the Crown lawyers and advocates, came to see her. She maintained her objection and said that she would listen to their arguments against the objection but by way of interlocution and not judicially. These discussions appear to have lasted two days. She would, she said, answer in a full Parliament so that she might be declared next to the succession, but "to the judgment of mine adversaries amongst whom I know all defence of mine innocency will be barred, flatly, I will not submit myself." In vain they threatened to proceed in her absence, but eventually on the 14th it was agreed that, if her protest were received but not accepted, she would appear, "being anxious to refute the charge."

Thereupon the Commissioners took their places according to an elaborate scheme and ceremonial that had been settled in advance. A chair had been placed on the dais for the Queen of England who was not present. Mary's chair was in the middle opposite the Queen's chair. As she came in she exclaimed: "I am a Queen by right of birth and my place should be there under the dais." She repeated her protest. She was denied counsel and papers. Mr. Justice Gawdy then opened the case, speaking as a counsel for the prosecution would. He maintained that she knew of Babington's conspiracy, approved, promised assistance and showed the ways and means. Thereupon she denied all knowledge of Babington and all communication with him and demanded production of her own writing if that were to be proved. Extracts were then read from Babington's confession, whereupon she said that letters had passed between her and many men, but that did not make her privy to all their wicked counsels. Then copies of her correspondence with Babington were read. The originals had been allowed to reach the addressees. Nowadays photographs would be taken and produced. Babington's letters showed that preparations were being made for a rising, for an armed rescue and for the assassination of Elizabeth, the words as to the last being "for the despatch of the usurper, from obedience of whom by the excommunication of her we are made free, there be six noble gentlemen, all my private friends, who for the zeal they bear to the Catholic cause and

Your Majesty's service will undertake the tragical execution." Mary's reply was long and detailed, going to every point of the letter and contained the words: "By what means do the six gentlemen deliberate to proceed?"

As to Babington's letters she defied them to prove that she received them. "A packet of letters that had been kept from me almost a whole year came into my hands about that time, but by whom sent I know not." Of her reply she said that it did not come from her and it was easy to counterfeit cyphers, and she feared lest this were done now by Wallingham to bring her to her death. They pressed her with the evidence of her secretaries, who were not produced to meet her. Curle, she said was an honest man, Nan might easily be drawn by reward or hope or fear to give false testimony, and she burst forth: "The majesty and safety of all princes falleth to the ground if they depend upon the ways and testimony of secretaries. I am not to be convicted but by mine own word or writing. If they have written anything which may be hurtful to the Queen, my sister, they have written it altogether without my knowledge, and let them bear the punishment of their inconsiderate boldness." To the suggestion that she purposed to convey her title to the Kingdom of England to Spain, she replied that she had no kingdom to convey, but it was lawful for her to give those things which were hers at her pleasure and not be accountable for the same to any, as if it could be any possible concern to any Englishman that on Elizabeth's death he might be handed over to the mercy of Philip of Spain. Mary admitted her cypher and that she had used it for corresponding, but when she was pressed with the confessions of her secretaries she flatly denied the allegations, protesting that she knew neither Babington nor Ballard.

Towards the close of the day she was taxed with letters she had sent abroad praying foreign aid. Her answers were significant—that such things "made not to the destruction" of Elizabeth, and if foreigners laboured to set her at liberty it was not to be laid to her charge. Moreover she had often informed the Queen that she would seek her liberty.

The next day she renewed her protest, adding that the Commissioners were so misusing their powers as to bring into question the religion she professed, the immunity and majesty of foreign princes, and the private intercourse of princes. She



also complained that she was made to descend from her royal dignity and appear as a party before a tribunal simply in order to be excluded from the succession, and said that she only appeared lest she should seem to have neglected the defence of her own honour and innocence, and quoted the accusation made against Elizabeth herself of complicity in Wyatt's Rebellion. Finally she asked for an advocate, and that as a princess she might be believed upon her word, for, she added : " It were extreme folly to stand to their judgment whom she saw most plainly to be armed with prejudice against her." Burleigh answered that they were there merely to arrive at the truth. She interrupted that the fact never could be proved. The secretaries could never have confessed but out of fear of torments or hope of reward and impunity. She complained that her papers had been taken away and that her secretary was not there to assist her.

Then they proceeded to read her letters, and she again adverted to her former secretaries. What they declared contrary to their duty to her could not be received. Once forsworn they had lost credit. Nan had frequently written otherwise than she dictated, and Curle wrote whatever Nan bade him.

Finally, being pressed about the cession to Spain, she said she had been urged to establish the succession in Spain of an English Catholic, and had incurred displeasure because she would not consent, " But now, all my hope in England being desperate, I am fully resolved not to reject foreign aid." Finally she asked to be heard in a full Parliament or to speak with the Queen and with the Council.

This ended the proceedings at Fotheringhay and the Commission adjourned to the Star Chamber at Westminster where they reassembled on 25th October. Mary was not present and the only business was to call Nan and Curle, her secretaries, to prove the letters and copy letters. Thereupon the Commissioners pronounced the charge against Mary to be true. Nan afterwards protested that he had not betrayed his mistress, but on the contrary had given evidence in her favour. The records do not bear out this assertion. Although the findings would only affect Mary herself, it was thought advisable to declare that the sentence in no way affected King James. It was important to keep him from a personal grievance, and active steps were now taken to prevent his taking up arms.



[By W. Fisk

THE TRIAL OF THOMAS, EARL OF STRAFFORD, IN WESTMINSTER HALL, 1641

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JOHN WILKES

[By R. Earlom

*See page 141*

to rescue or avenge his mother. To his eternal disgrace he contented himself with verbal remonstrances.

When the findings were published, a curious episode occurred. Some would have it that the whole of what happened afterwards was an elaborate pretence, to make a cold, deliberate purpose of putting Mary to death. Others see in the incidents the machinations of Elizabeth's advisers to trick her into consenting to her cousin's death against her will. Probably the truth is that she was vacillating, as was her wont, and her advisers were seeking to force her to a definite decision. There seems to be no reason to doubt that, having decided, Elizabeth sought to change that decision and still keep matters in suspense. With her habit of mind it would be easy for her to come to the honest belief that she never really did consent. Parliament confirmed the sentence, and then both Houses presented a humble Supplication to her, desiring in stately language that Mary's execution should be decreed. Elizabeth's answer was evasive, and after twelve days she returned a final reply, which she herself described as an "answer answerless." The Lord Chancellor and the Speaker procured an audience to give reasons why Parliament should adhere to their resolutions, though she had desired them to find another solution. She declined to commit herself and prorogued Parliament. Meanwhile the diplomatists were busy and the French Ambassador was especially active in his efforts to prevent the execution. The Queen would not give a decisive answer. She even wrote to Amyas Paulet to relieve her of the necessity by himself killing Mary, but he refused. The incident is not quite so atrocious as is generally assumed. It can at least be suggested with some plausibility that the publication of the findings, by the very terms of the Statute, deprived the killing of the legal aspects of murder. However that may be, the suggestion was disingenuous and must always cast deserved discredit upon Elizabeth. Eventually she signed the warrant and Davison the Secretary of State sent it off. After it had gone, Elizabeth desired (or pretended she did) to recall it, but it was too late. Whether she knew that it had gone and acted in order to save her face with other countries is a matter for conjecture, but the request supplied her with a convenient scapegoat, for Davison bore the whole brunt of the blame.

The execution was a touching scene. Whatever faults Mary had committed, she bore herself in this last ordeal with

courage and dignity. In all she said and did she cast lustre on her fame and by the last act of her life largely redeemed its previous crimes. She went to the block as a Queen confident of her cause, and her memory still lives as that of a beautiful, radiant and unfortunate woman sacrificed to the policy of an envious rival.

Was she really guilty? I answer that none who reads the protests against her secretaries' confessions and acts being received as evidence can resist the conclusion that her whole defence was based upon the fallacy that what she implied but did not personally do was no proof against her. She was cruelly treated at her trial. Without aid of counsel, a lonely woman was confronted by the best brains of England. She defended herself steadfastly and brilliantly, weakened as she was by long years of imprisonment; but she was done to death.

*The Trial of Thomas Wentworth (Earl of Strafford)*



## THE TRIAL OF THOMAS WENTWORTH (EARL OF STRAFFORD)

WHEN the Earl of Strafford was informed that the King had consented to his death, he is said to have quoted with bitterness: "Put not your trust in Princes." And indeed, whether Charles wished to preserve his honour unsullied, or intended to pursue his policy, his failure to save his Minister was a convincing proof of incapacity.

The Commons knew Strafford better than he. They realised that in that Minister Charles possessed a servant who was able to bring to fruition the designs of a master who aimed at despotism. At him they struck, and when the King yielded to their attack, they learned from his surrender that victory in the constitutional struggle must in the end rest with them.

The Stuarts misconceived their duties as grossly as they mistook the temper of their subjects. They forgot, what the Tudors had never forgotten, that their title was Parliamentary, and conceived that they reigned by Divine Right, being responsible to God alone. The great Tudors were more unscrupulous and more tyrannous than they, but preserved an outward deference for Parliamentary forms. Warned by rebellion and disaffection, they realised that a King must be the leader of the nation, and when Elizabeth died she left to James the loyalty of a united people. That nation did not change because the Stuarts had replaced the Tudors. The new King might have had all the loyalty that Elizabeth had won, but "the wisest fool in Christendom" chose a policy running counter to the traditions and prejudices of the nation, while confiding in favourites whose unworthiness was a public scandal. But James did not live to see civil war. Under his rule, the struggle lay in the Courts, and his subjects viewed with apprehension the attempt to subvert the rights and liberties given by law. He died, and his young son became King. He could have stayed the conflict, for the nation would have welcomed with enthusiasm a change of



monarch and of policy. One thing, however, it intended to secure—that the money which it granted should neither be fooled nor frittered away. Give them good government and they were satisfied. But Charles, like his father, fell under the spell of Buckingham, the one man whose hands Parliament was determined to keep from the public purse.

On his accession, Charles followed the usual practice of summoning a Parliament, the short-lived Parliament of 1625. The Commons demanded that supplies should be managed by persons in whom they could confide, and the affronted King at once dissolved Parliament. Conspicuous on the popular side in the debates was Sir Thomas Wentworth, the head of a notable Yorkshire family. Parnell, centuries later, had some of this man's qualities. He was a passionate and ambitious man, of swarthy countenance and haish expression, bent on avenging his real or fancied slights at the hands of Buckingham. The favourite had thwarted Wentworth's natural ambition to hold the offices open to men of position in his country; a rival and enemy was preferred. So Wentworth ranged himself in opposition and added weight to that opposition.

Dissolution without grants did not solve Charles's financial problem, and so in 1626 a fresh Parliament was summoned. To silence opposition, many of the late members were made sheriffs, which would at least prevent them from taking their seats. Wentworth, Coke and others were honoured by this attention, but the device was a failure, and the second Parliament was also dissolved, leaving all the problems unrelieved, with embittered feeling on both sides.

Buckingham had projected an expedition to the Isle of Rhé, and to finance it Charles resorted to the easy but illegal method of exacting forced loans. Wentworth, Eliot and others resisted the imposition, and were imprisoned. But the expedition miscarried; the money was spent; and in 1628 Charles summoned a third Parliament, which was certain to challenge the King's illegal actions. Wentworth desired an accommodation. It was not agreeable to any Englishman to see the realm weakened by disputes which could be avoided by tact and diplomacy. He proposed to Charles a measure which would declare the recent exactions illegal, but the King rejected it and thereby offended Wentworth and left the task for others, who, with the aid of Coke and Selden

forced on the King the Petition of Right, which asserted the illegality of those practices in a manner still more obnoxious to the monarch. So ended the first session.

Most Englishmen were satisfied, and many became reconciled to the Crown, especially as Buckingham's murder, in August, 1628, removed a grave cause of offence. Wentworth had been taken into favour in July, 1628. In quick succession he was created a baron, then a viscount and made President of the Council of the North. The Council had been created by Henry VIII after the Pilgrimage of Grace, and it exercised vague, but extensive, executive and judicial functions in the five northern counties. Its legality had been challenged, but Wentworth now held unquestioned authority in the North.

Next year a final breach occurred, and for eleven years Charles achieved the astonishing feat of reigning without a Parliament. Taxes were levied without legislative sanction; old feudal dues and rights were revived, and all classes were made to groan under exactions which were not the less resented because the payers believed, and with reason, that they were illegal.

Wentworth's trial has perhaps been the reason why the blame is so often put upon his shoulders, but he was not the King's sole, or even chief, adviser. Weston, the Lord Treasurer, succeeded to Buckingham's position as chief Minister, and when he died Wentworth was in Ireland. He became a Privy Councillor in 1629, and in 1632 he became Lord-Deputy of Ireland, where he usually resided until 1639. He retained his English offices and remained in close contact with the English administration. Under his rule, Ireland began to prosper. He knew the art of managing a Parliament, and the body which met in 1634 was induced to make grants of such liberality that he was practically free from the need to summon it again.

He encouraged and developed trade, and has the credit for establishing the linen industry. But he was harsh and overbearing, and by his imperious insistence on his own way alienated the English and Scottish settlers. His servants were held to their duty and given few opportunities for plunder, though the Lord-Deputy had secured to himself an adequate share of the revenues. By his satellites in Council he exercised all administrative functions, and even claimed legislative and

judicial powers. Dissentients were tried by court martial. While thus alienating the settlers, he also alarmed them by raising forces from among the Irish and using them to enforce his decrees.

But next he roused the Irish. Under Elizabeth and James they had experienced the woes of being ejected to make way for settlers. Connaught, however, had escaped. Wentworth now laid claim to that province on the King's behalf. By practising on the judges, and packing and intimidating the juries he succeeded, in 1635 and the following years, in obtaining verdicts for the Crown. At the last moment, however, the project of a land settlement was abandoned. Affairs in Scotland had reached a crisis. In England they were rapidly approaching the critical stage, and there was no need to fling Ireland into the cauldron. Nevertheless, rebellion had become inevitable. But as it did not flare up until he lay in his grave, his responsibility was forgotten. Men only recalled that in his day he had maintained peace with a high hand and that under him the land had known prosperity.

All along, Wentworth had been following with attention the course of events in England and Scotland. His chief correspondent was Laud, who became Archbishop of Canterbury in 1633. Between them they evolved the policy of "Thorough," and Wentworth sent a constant stream of advice and comment across St. George's Channel. There is no doubt that he realised his own high competence, and devoted it to the service of the King. He was no enemy of Parliaments, but by now he had reduced them in his mind to the role of a legislative body to whom was entrusted the task of providing the money that the administration needed. But in his opinion the function of Parliament, like the rule of law, was only for times of peace. When crises arose and the country was in danger from within or without, the King's will became supreme, overriding all inconvenient forms or rules. Though he limited this special function to times of stress, it was not difficult for him to slide into the opinion that Parliamentary opposition to the King's views might itself afford such an occasion, and in any case his statement of the rule left it entirely to the King to decide when such an emergency had arisen or had ceased. But both he and Laud forgot that their policy of "Thorough" demanded as a condition of

success that the Royal support should be equally thorough, and Charles was not a companion upon whom a discriminating man would rely for the purpose of hunting the tiger.

By 1639, Wentworth had become necessary in England. The system of personal government was breaking down. With Laud's assistance, Charles had, as a side-show, been imposing an episcopal system upon the Scots, and Scotland was on the brink of revolt. No other Minister was so able as Wentworth. He was at once sent for. He was created Earl of Strafford and in fact, if not in name, became the King's chief adviser. He counselled Charles to summon a Parliament. He had called one in Ireland himself, and it was a success, but in England the Commons, meeting early in 1640, demanded redress before supply, and were promptly dismissed. This, the fourth Parliament, earned the name of the Short Parliament. The Scots, who had taken up arms and come to an understanding, again began hostilities, defeating the King's forces and capturing Newcastle. Strafford had by now become Lieutenant-General—he never seems to have resigned any office he obtained—and shared the disgrace. He again advised a Parliament, and the Long Parliament came into being in 1640. Charles was in extremities, and the popular leaders, realising their opportunity, carried a motion to impeach Strafford and Laud. The haughty Lord-Deputy was arrested on his arrival from Ireland, and the two accused were lodged in safe custody in the Tower.

Impeachment was then the appropriate method of bringing a delinquent Minister to justice. The Commons prosecuted, by members named by them as managers, and the Lords sat as judges. The tribunal was capable of resisting any Royal influence.

The procedure adopted was to frame Articles of Accusation, to which the accused made a written reply. In this instance the Commons accused Strafford of treason, by seven articles in general terms which were supplemented and explained by twenty-eight further articles which formed the statement of the charges made. They may be grouped under five heads. First, statements of policy and advice given, subversive of the fundamental laws of the realm and designed to bring about arbitrary government. Next he was accused of procuring a new and illegal commission to the Council of the North, and of using his powers to vex and oppress the

people living within its district. Thirdly, there was Ireland, and the charges relating thereto were numerous. Instances were adduced of interfering with the administration of justice, of exercising martial law in time of peace, of treating disobedience to illegal orders of the Privy Council as crimes, of ejecting men from their estates without process of law and imprisoning such as resisted, of exacting taxes and enforcing decrees by the quartering of soldiers, of manipulating the Customs for his own profit to the detriment of traders, of enforcing his illegal and arbitrary exactions by fines, imprisonment and whipping, and of raising an army of Papists to be used in England. Fourthly, as to Scotland, he was accused of endeavouring to stir up strife between the English and Scots, and to break the Pacification between Charles and the Scots. Lastly came a series of charges relating to recent events; that he had advised the King that he was released from all rules; that he was a party to the exaction of Ship Money and other imposts; that he was concerned in the illegal jurisdiction of the Star Chamber; that in July, 1640, he advised the King to seize the bullion at the Mint, which belonged to private owners, and to debase the coinage; that in August, 1640, he had taxed Yorkshire to maintain his troops; that he had threatened the City of London in order to enforce a loan; and, finally, that he had procured the defeat of the army and the loss of Newcastle to stir up strife between England and Scotland. In short, nothing that had happened since 1628 had occurred except by his advice and procurement.

Strafford's reply is more interesting from its admissions than from its denials. Much he did deny; for many things he had the King's own command or express approval; for others he could point to many precedents. But as to Ireland, his answers are illuminating. Granting that the law was different, that martial law was always in force, that troops were habitually used to collect taxes and enforce decrees, the impression remains that in Ireland his will was supreme; that no law, custom or rule was strong enough to curb his actions. His explanations as to the Customs are plausible. A farmer of the Customs might safely rely upon his contentions, but for the Lord-Deputy to be that farmer was indefensible, and fraught with evident risk of irregularity and extortion.

As to the main charge that by counsel and advice he had

assisted the endeavour to subvert the fundamental laws of the realm and to introduce arbitrary and tyrannical government against the law, his answer is of the utmost interest. He said (in effect): "What advice I gave I gave honestly, and it was my duty to the King to say what I honestly thought. It is true that I have at times given different advice, but no man can always be consistent. Further consideration often convinces one of error. But remarks of mine have been taken, in a mutilated form without any mention of the circumstances or of the necessary qualifications. Therefore I state now my doctrine of the Prerogative, viz, 'That in a case of absolute and unavoidable necessity, which neither would nor could be prevented by ordinary remedies provided by the laws . . . His Majesty was absolved from ordinary rules and might use (in a moderate way as the necessity of the cause would permit) all ways and means for the defence of himself and his Kingdom: for in such extremity *Salus populi* was *suprema Lex*, provided it were not colourable nor anything demanded employed to other use, nor drawn into example when law and justice might take place, and that when peace was settled reparation was to be given to particular men, otherwise it would be unjust.' What is alleged misses out all my qualifications and the circumstances with regard to which it was spoken."

One may test this doctrine by the undoubted fact that he justified on this principle the levying of Ship Money in time of peace, when the need arose merely because the King and Parliament differed as to the terms on which a money grant should be made. His correspondence with Laud shows clearly that the law and lawyers were obnoxious to him; insistence upon obedience to due form hampered and circumscribed his domineering activities. How far he was to be trusted may be seen in the case of Loftus, Lord Chancellor of Ireland, whom he deprived of office and imprisoned. The cause alleged was disobedience to an Order in Council. This order was a command to execute a suitable settlement on Loftus's son on the occasion of his marriage. The bride was a lady with whom Strafford had an affair, for, like Wilkes, who was much uglier, the harsh and forbidding Viceroy was a notorious gallant. In short, it came to this: Loftus was imprisoned and deprived of office because he declined to sanction and subsidise his son's marriage with the Deputy's late mistress.

The time now came for the trial. Westminster Hall was fitted up for the occasion, with a throne for the King and seats for the Lords, the Judges and the bystanders. A curious structure adjoined the throne, a wooden room or cabinet wherein unseen the King and his young son (for the Queen soon wearied of the technical arguments) sat day by day hearing the tale of Strafford's tyranny and his constant proof that the King had commanded or approved the acts so denounced. On 22nd March, 1641, at 7 a.m., Strafford left the Tower by water escorted by six barges with 50 pairs of oars and 100 soldiers. At Westminster he was taken to the Hall by a guard of 200 of the train band. At 9 o'clock the King and Queen came, but did not show themselves. Various explanations were attempted for this attendance, unseen but not unknown. It would have been far better for them to come openly or stay away altogether. The Earl of Arundel was Lord High Steward, presiding over the Lords present. The Judges attended to advise the House, and the Commons were present in large numbers. The managers, of course, had special places assigned for them; the other members had merely seats reserved for such as cared to come. The whole day, from 9 till 2, was occupied in reading the accusation and the answers. Two hours of this proved enough for the Queen, but Charles and his son sat it out till the end. Next day serious business began. Pym led for the Commons, assisted by Glyn, Maynard, Whitlock, Lord Digby, St. John, Palmer, Sir Walter Earle, Stroud, Selden and Hampden. Most of them were lawyers of repute. Pym opened the case in a long speech, and then Strafford made a short answer, speaking of his services to the State. After that Pym sprang a surprise by bringing forward three new Articles of Accusation. Strafford, not unnaturally, objected, but offered to waive objections if he could have time to make his answer. The Lords deliberated, and decided at length that though Strafford's objection and request were well founded in principle, the new articles were neither so numerous nor so weighty that he could not reply at once. The ground given is surprising in view of their nature, but no more was heard of them.

The three new charges were :

1. Withdrawing from the Exchequer in Ireland £40,000 for his own use.

2. Maintaining garrisons in Ireland at the cost of England.
3. Advancing Papists and infamous persons to high places in the Church of Ireland.

Strafford's surprise appears to have been merely forensic, for in answer to the first of them he produced on the spot the King's letter authorising the transaction and bearing the marks of the auditor who had passed the payment.

To the second he replied that he had so decreased the burden which existed before his time that he deserved thanks, and to the third that he acted on the advice of the best and wisest of the clergy. This closed the second day's proceedings.

On the third day, the Commons attempted to prove their accusations one by one. These were the 28 Articles, and each of the lawyers took charge of a group. Glyn began to prove the treasonable words. The first of these was that he said at York Assizes in 1632 "That the King's little finger should be heavier than the loins of the law."

It is unlikely that Strafford would, in the early days of a young King, model his language so closely upon that of the advice of the young men to Rehoboam. His version is more reasonable—that, on an occasion when some penalties imposed by law were remitted, he had remarked that the little finger of the law was heavier than the King's loins. One witness said he heard the President make the statement alleged when he was nine yards away, and it was at once proved that for years he had been too deaf to hear what was said three yards away. Strafford objected to Sir David Foulis as a witness on the ground that he was a personal enemy, but the objection was rightly overruled. Such an objection is not to the admissibility of his evidence, but to his being believed. On the Thursday, Glyn proceeded to prove that Strafford had said at Dublin, in 1633, that Ireland was a conquered nation, and that the King could do with it what he pleased. Strafford explained that he had pointed out that as Ireland was a conquered country the King could have done what he pleased, but had determined to give it the benefit of the laws; and admitted that he had stated that the King's sentence was law in matters not determined by Act of Parliament. But, as he pointed out, it did not matter what the real version was, for a thousand such expressions would not make one felony, to say nothing of treason, which was the charge against him.

On Friday came the proof of his saying: That he would



not suffer his ordinances to be disputed by lawyers before inferior judicatories, and that he would make an Act of State equivalent to an Act of Parliament. Strafford retorted that what he had said was : That he would not have his ordinances contemned ; and that obedience was due to Acts of State as well as Acts of Parliament. This concluded the proof of his sayings, and on Saturday the Commons took up the particular acts alleged. The first was that he had sentenced Lord Mountmorres to death by court martial for resisting orders ejecting him from his estates. The fact was clear, and the defence set up was that martial law was the accustomed course in Ireland, that the Court had acted without interference from him though he was present ; and furthermore, that he had the particular commands of His Majesty. In any event, it could not be high treason. This concluded the first week's proceedings.

Next week Glyn took up the sixth, eighth, ninth, tenth, and eleventh Articles, omitting the seventh, and then Maynaid dealt with the twelfth. Palmer then followed with the second part of the fifteenth Article, saying nothing about the thirteenth, fourteenth and first part of the fifteenth, and concluded his part by taking the witnesses as to the sixteenth Article. Then Whitlock dealt with the nineteenth Article, omitting the two between, and the second week of the trial concluded. On Monday, 5th April, Whitlock proposed to take Articles 20 and 24 together. Strafford objected. Tuesday was a blank day, and on the Wednesday, Whitlock resumed with the twenty-fifth Article. The prisoner objected that what was alleged was not treason. Whitlock replied that they relied on the cumulative effect of all. To this Strafford retorted that talking in such a way was as much as to say " No treason at all," and he objected to the heaping of things together in order to bolster up an unfounded charge. Then came the evidence as to the twenty-sixth and twenty-seventh Articles, and the twenty-eighth was abandoned. This, charging him with responsibility for defeat and the loss of a fortress, would, if true, have supported a charge of treason, but it was manifestly absurd. Then Sir Walter Earle took up the twenty-second Article, but was so roughly handled that Lord Digby ended it by saying that their evidence was not ready, a statement which throws light on Whitlock's attempt to group Articles 20 and 24 together. On Friday, Strafford was ill. On Saturday, Glyn proposed to take the evidence on the

twenty-second Article. The Lords refused; a deadlock ensued, and the Court adjourned. Sunday was a day of rumours, but when the fourth week began the two Houses were in conference, and eventually the evidence on both sides on the disputed Articles was waived. On Tuesday, 13th April, Strafford was called on for his defence. He stated his constitutional principle to be that the "Prerogative must be used, as God doth his omnipotence, upon extraordinary occasion. The laws must have place at other times." He went through all the charges, denying and explaining and commenting upon the charges which had not been supported by evidence. Eventually he paused and confessed that he was unable to go on. Nature was exhausted. Pym replied, and this concluded the speeches on the evidence. So far Strafford had been alone against the Commons. In criminal trials prisoners were not allowed the aid of counsel on questions of fact. The Commoners who appeared were nearly all lawyers of tried worth, and they had managed the case as a team. Nevertheless, Strafford had held his own, and the next event was the argument on the legal question whether the facts given in evidence constituted treason. Upon that question counsel for the prisoner would be heard, and the Commons began to be afraid of their position. On Wednesday the House met, and it was proposed to proceed by Bill of Attainder. The suggestion was made that the offence was clearly treason within the words of the Statute of Treason. Selden, Holborne and Bridgman pointed out that the words relied upon had been repealed, and treason depended upon the enacting words of the Statute. In spite of, or perhaps, indeed, because of, this objection, the Commons decided to proceed by Bill. On Thursday the two Houses met in conference. The Lords were inclined to continue the trial by hearing Strafford's counsel, but the Commons insisted upon the Bill and threatened a rupture. Friday saw the deadlock continue, but, as the Lords remained of the same mind, they resumed on the Saturday, when the managers attended, but sat as spectators among their colleagues. The prisoner's counsel were Lane, the Attorney-General to the Prince of Wales, Gardiner, the Recorder of London, Lee and Lightfoot. Lane argued at length that the evidence disclosed no treason. Gardiner followed, but pointed out the inconvenience of separating law from fact. They did not know what conclu-

sions of fact had been arrived at, and until they did were unable to consider the evidence. On this the Lords adjourned, and the fourth week ended. Several days passed, and on Thursday, 29th April, a conference was held at which St. John endeavoured to satisfy the Lords that the most appropriate procedure was by Bill of Attainder. The King and Queen were present. The only speaker was St. John. Next day Strafford petitioned the Lords for his counsel to be heard again. On Saturday, 1st May, the King intervened. Addressing the Commons in person, he assured them that there was no project to bring the Irish army to England, nor had he been advised to establish arbitrary government. He declared that there was nothing against Strafford that deserved censure, and he was fit to hold any office. Charles ended by declaring that he would never in heart or hand concur with them to punish Strafford as a traitor.

Nevertheless, by 204 votes against 59 the Commons passed the Bill. On the 3rd May the unusual course was adopted of blacklisting the minority. Someone offered in Old Palace Yard a list of 55 "Straffordians" who voted against the Bill. All were not supporters of Strafford. Indeed, two of the managers, Lord Digby and Selden, figure in this list.

It was not easy to determine what was the real motive of the Commons' change of front, but there must have been some very cogent reason. One may conjecture that the object was to remove the scruples of the Lords. There was an active minority devoted to the Court, and much influence was being brought to bear. On an impeachment, they would decide judicially, or should endeavour to do so, and the advice of the judges would weigh heavily. But on a Bill of Attainder the Lords were only called on to act legislatively, and scruples as to the law would not have the same weight. A peer might well be convinced on the evidence that Strafford deserved condign punishment, and yet hesitate to pronounce him guilty of treason. Such a doubter could perhaps vote for death on the Bill, but might vote for acquittal on the impeachment.

While the matter was pending in the Lords, Charles made a fatal move. He planned to seize the Tower and rescue his Minister. The Commons were well informed. Pym revealed the plot. The populace rose, and threatened the Queen and the Royal Family. In the excitement the Lords met to consider the Bill. It was a thin house, for a number stayed away

from motives of prudence or fear. The Bill passed by 26 to 19, and it was left to Charles to decide whether to assent or not.

It is said, and perhaps with truth, that Strafford wrote to Charles, urging him to pass the Bill if he might thereby bring about an accord with his subjects. Yet, when the victim heard that the King had yielded and that he was to die, he received the news with surprise and bitterness. Once his fate was decided, little time was lost, and on Wednesday, the 12th May, 1641, Strafford's head fell on the scaffold. His body was taken to Yorkshire for burial.

Was Strafford guilty of treason? The answer in strict law must clearly be in the negative. Treason is an offence against the allegiance due to the Sovereign in aid and counsel. The underlying theory of the Commons that there were fundamental laws, and that to aim at overturning them was treason, is erroneous. In legal theory there are in this country no laws, not even the Act of Settlement or the Act of Union, which Parliament may not alter as easily as a Statute providing for by-laws in a country parish. To break the law is a crime. To break the laws upon which civil liberty depends is a high crime. But to call treason that which falls clearly outside the terms of the Statute of Treason does not justify a conviction. He was charged with treason, but at best the evidence proved offences, heinous indeed to the last degree, but not treasonable. Nevertheless, if one sets aside the purely legal aspect of the case and regards it from the wider standpoint, there can be little doubt that Charles and his advisers were working to substitute arbitrary government for the rule of law. Strafford had shown himself to be a grave menace to the constitution, and in that untechnical sense he was a traitor.

Why did Charles abandon his Minister? He had declared in public that he would never do so. It is commonly said that he was moved by the clamour of the mob or by fear lest harm befall the Queen and her children. But even if it be true that Henrietta Maria disliked Strafford—and it is certain that the courtiers detested him—that would not be an explanation. It is true that the Commons demanded his life, but that was because he had ruthlessly carried out the King's policy, and the sacrifice would be in vain if that policy were not abandoned. Yet Charles had no intention of giving up his aims, and to further them he needed able, resolute men, whom the memory of Strafford would thereafter deter from entering boldly

upon a course which might evidently lead them to the scaffold. Personal honour and clear policy demanded that the struggle should be determined then and for ever. But Charles was a weak man, and he gave way. Thereby not only did he lose his honour, but he signed his own death-warrant. The one man who could have carried out his policy was sacrificed but the policy was continued.

“Put not your trust in Princes.”

# *The Man Who Stole the King's Crown*



## THE MAN WHO STOLE THE KING'S CROWN

**C**OLONEL THOMAS BLOOD is believed to have been born in Ireland, so perhaps it is appropriate that his trial never took place at all. It is remarkable that this man, caught in the act in a daring crime with which the whole town rang, was pardoned before his examination was completed, and thus cheated the gallows. His audacity saved him. Charles II loved a daring scoundrel, and Blood played a last card when he bluffed his captors into bringing him before the King. He left the audience a free man, not only pardoned but with his estates restored.

The days of the Merry Monarch were noted for the good fortunes of the nimble-witted adventurer. The Restoration had by a turn of the wheel changed Charles from a claimant to a King, and reaction set in from the stern rule of public conduct enjoined by the Puritan regime. Men and women seemed to devote their time and energy to the pursuit of wanton pleasure, and the monarch led the dance and set the pace. But Blood was not of this stamp. He had been a Cromwellian and to his dying day was ranked as a Presbyterian. The Restoration which had confirmed the fortunes of the Monks and Montagues was the cause of his ruin. He refused to rally round the throne, plunged into treason, raised rebellion and made himself known as a daring opponent ready at all times and places to strike a blow for vengeance. The gates of Dublin Castle, a lonely road near Doncaster, and St. James's Street in London, had all been scenes of exploits which had made him famous before he set the seal on his consummate audacity by depriving the King of his Crown in 1671.

It is not quite certain when or where he was born. Some authorities say that it was in 1618 in Ireland, and those data will serve. His father was a blacksmith in Ireland, but a prosperous one, for he acquired iron works. When the Civil War broke out, Thomas Blood was a vigorous young man and he joined the Parliamentary forces. He rose rapidly and when fighting ceased he was a Colonel. He went to Ireland



with the Army when the "cuise of Cromwell" fell upon that unhappy country, and was one of the mainstays of the Cromwellian rule there. Henry Cromwell rewarded him with grants of forfeited estates, so that when the King came to his own again, Blood lost an income of £500 a year and was thrown into opposition and poverty at one stroke. He made no attempt at reconciliation but was marked as a "sectary"—a dangerous man, "bloody, bold and resolute," who needed careful watching.

For a time the Puritan party in Ireland remained quiet, biding their opportunity. By 1663 they thought the chance had come. The Duke of Ormonde ruled Ireland for the King, and the King needed money for his pleasure too urgently to pay for the necessary services. An army was essential if Ireland was to be held, but the soldiers, like the civil officials, were allowed to be in arrears with their pay, and discontent grew among the very men whose loyalty was an indispensable condition for the maintenance of government. The "sectaries" thought that the season was at hand and planned a rising. Some practised upon the Members of Parliament in Dublin, others on the troops. But something more was needed. It was essential to seize Ormonde and Dublin Castle in order to capture the whole machinery of government. To do so, a body of desperate men was needed, and above all an able, resolute leader. To the conspirators it seemed that Blood was the right man for this enterprise, and he entered into the design with zest and zeal. All was prepared and the rising was planned for 9th March, 1663, when, a week before that date, one Arden betrayed the plot, and Ormonde began to prepare reprisals. Many men would have fled, but Blood was not of that stamp. The Lord Lieutenant knew the date; well, then nothing was more simple than to throw him out by altering the date to the 5th, and so it was arranged. There were more informers than one, however, and Ormonde struck on the 4th. Many were arrested and afterwards tried, convicted and executed. Blood had received warning and got away. He did not go far. His brother-in-law had been seized, and Blood's first thought was to rescue him. He made the attempt and nearly succeeded. After this failure he lurked about in secret places in Ireland sheltering among the disaffected, but at last the pursuit became too close and he departed for Holland.

It is eloquent testimony to the difficulty of communication in those days that Charles did not learn of the plot until all was over. It was not till 1st June that Pepys, visiting the King's Court, found that the place was ringing with the news of Blood's plot, as it was called. By that time the enterprise was mere history, its leaders were in their graves, all but Blood, who was abroad. He did not remain long in foreign lands. It was soon found that he was in London associating with the Fifth Monarchy Men, a set of fanatics, who were conspiring to establish a republican theocracy in England. Their plot miscarried, but Blood again escaped. From now onwards he was a marked man, but the authorities could never find him. So often did he offend, so open was he in his daring, that suspicion grew. Perhaps they did not want to find him. He was known to be a desperate and ruined rebel. Every disaffected man in England knew that, and so did the Government. Blood had learned that there was one safe method of dabbling in treason, and that was to betray the traitors, and it is now believed that while in Holland he had come to an understanding with the Government and had purchased immunity by becoming a spy. Wherever revolt was threatened, there was Blood to be found. Perhaps he was always sincere in his political opinions, but there were two things that he desired above all others—to escape an ignominious death and to obtain restitution of his forfeited estates. To secure these objects, others might be sacrificed provided always they were not his relatives or friends, for to them, in an odd perverted way, he was loyal.

After the Fifth Monarchy Men had failed, Blood went to Scotland and joined the Covenanters. With them he served at the Battle of Pentland Hills on 27th November, 1666, and after that disastrous defeat he returned to England pursued by the royal officers who chased him into Ireland and thence back to England. His friend Captain Mason had been unlucky and was awaiting trial. The Assizes were about to be held in the North and Mason was sent from London under an escort of eight soldiers picked for the purpose by the Duke of York himself. All went well until the troop were nearing Doncaster, when on a lonely road they were suddenly attacked by Blood and three friends, who rescued Mason and left most of the escort dead on the field.

This exploit caused a fresh sensation, and a price of £500

was set on Blood's head, but he removed quietly to Kent, where he lived for a long time as Thomas Allen, a physician.

In November, 1670, William, Prince of Orange, visited England and there were great celebrations at Court. James, Duke of Ormonde, was naturally one of the guests and attended the rejoicings. Years had passed since the Duke had dispossessed Blood and had crushed his Irish plot, but the latter had neither forgotten nor forgiven him. In November, 1670, the Duke left St. James's Palace in his coach and was driving up St. James's Street, when he was stopped by Blood with five others. They dragged the Duke from his coach, bound him and mounted him behind one of the party who began to gallop off to Tyburn. The object was to hang him on the gallows there as a common malefactor. Blood had gone hot foot to get the gallows ready, and was not in charge of the Duke. The prisoner did not lose his head. He struggled with his captor and just by Devonshire House succeeded in throwing him from the horse, but, being bound to him, the two fell together. While struggling on the ground, the Duke's coachman arrived and rescued his master. Again Blood escaped, and this time rumour had it that he had acquired a patron, the Duke of Buckingham, whose enmity towards Ormonde was notorious.

Another account is given of this outrage. It was suggested that Blood merely meant to hold the Duke to ransom until his estates were restored. It is difficult to accept this theory. The lands were in Ireland, the prisoner was in England, hard to hold in captivity and as a captive highly dangerous to the safety of his captors. Moreover, once the Duke got free, he could with perfect lawfulness and propriety repudiate his deed and hang the man who had extorted it. A swift revenge alone was possible, and men of the time believed that Blood sought the Duke's life.

No one was arrested, though the affair had taken place in the highway near the fields of Mayfair. But Blood was not satisfied. He had been baulked of vengeance and his estates were still forfeited. A man without means has a hard life at best, and Blood had been brought up to the profession of arms. He meditated on his position, and one day he had a great idea—he would hold the King to ransom, not in person, but by means of his treasure.

The Crown Jewels were kept at the Tower. They were

not numerous. Since John had lost the Regalia in the Wash, successive Kings had formed a store of jewels and from time to time the need of money had forced them to part with them. The Crown had been pawned at times. During the Civil War the furnishings of armies had led the first Charles to part with most of his jewels, and Cromwell had seized what were left. On the Restoration, Charles II had succeeded to a scanty inheritance in that respect, and the gifts that he lavished on his favourites had prevented him from making many additions. Nevertheless he was possessed of all the ornaments necessary for a Coronation, the Crown, the Orb, the Sceptre and the other costly things. They were in charge of Mr. Talbot Edwards, Keeper of the Crown Jewels, an aged man who kept them in a strong room in his official residence at the Tower. To reach them it was necessary to pass the gateway and the guards, and the problem of abstracting them, now insoluble, was then difficult enough to daunt all but the most daring and skilful.

Sometimes the Keeper would show his precious charges to the public, to whom the Tower had always been a place of interest. Early in 1671 he received two visitors who were anxious to see the Crown before they returned to their country home. One was a swarthy country parson in the flowing cloak that clergymen then wore, and the other was his wife. The parson was Blood on a reconnoitring expedition. Who the woman was no one could ever find out, for Blood would never say. It was not his wife, since she was lying sick at her parents' home in Lancashire. The two were shown the Crown and the other things, but while they were admiring them the lady became faint and giddy. Edwards called his wife, who ran to administer aid to the poor woman. She was given restoratives and permitted to lie down on Mrs. Edwards' bed, while Edwards and the parson conversed in the Jewel Room. At length the lady revived and was escorted away by the parson, who was loud in his expressions of thanks. Nor did he stop at words. Three or four days later he came again with a present of white gloves for Mrs. Edwards. Naturally, friendly relations were set up, especially as the parson was of such irreproachable loyalty, as his conversation showed. He saw the daughter, a young girl of great beauty, just of marriageable age. He was much impressed by her and eagerly inquired whether a husband had been found for her.

As it happened, her parents were thinking about the matter, but as yet no candidate had been considered. This was indeed fortunate, for the good clergyman had a nephew, just come of age, who had succeeded to a nice landed estate and was looking for a wife. He must arrange for him to visit the young lady with a view to paying her addresses. The Edwards were charmed. They asked him to stay to dinner and were much edified by his pious conversation. He was now a friend of the family, perhaps soon to be related to them, and of course he was welcome to call whenever he pleased. The unsuspecting Edwards made much of him. Matters progressed rapidly, and soon it was arranged that the nephew should pay a *visite de cérémonie* on the 9th May, 1671. The hour was fixed at 7 a.m., for in those days, even without summer time, people were up and about their work long before this hour, which was late enough for such an important call.

The day came and, as the hour approached, Miss Edwards retired with her mother to be suitably attired for the all-important first impression. Dressing was then, as now, a lengthy business, and they were safely out of the way when the reverend gentleman was announced with two friends of the family. A fourth member of the party was outside, but Edwards did not know this. One may explain at once that one of the two men with Blood was a man named Parrot, who was, it is believed, the man of that name who had been lieutenant to Major-General Harrison, the regicide. Parrot was afterwards hanged, in 1685, for his part in Monmouth's rebellion. There must be a delay, explained the parson, his nephew could not come with them but was following on after. Perhaps Mr. Edwards could while away the time by showing the friends the Crown Jewels. The old man had no reason for refusing to satisfy so innocent and loyal a curiosity, and accordingly they went to the Jewel Room, where the chest was unlocked and the glittering emblems of royalty were produced. The next stage was soon over. As soon as the jewels were produced, Edwards was seized and gagged. In spite of his surprise he struggled. Fearing that the noise would alarm the house, they struck him with mallets that had been concealed in their clothes. He still struggled, and endeavoured to raise an alarm, so Blood drew a sword from under his cloak and ran the poor man through. He fell apparently dead, and

the three men proceeded to work. Blood seized the Crown and crushed it together to hide under his cloak. Parrot was wearing loose breeches and they formed a convenient bag in which to put the Orb. The Sceptre had been taken by the other man. Blood had thought over the problem of the Sceptre. It was too long to conceal, and he had adopted the plan of cutting it in half. A file was produced, and the third thief was busy filing it in two when the outpost raised an alarm.

He had been loitering outside for some time. Miss Edwards was naturally anxious to know what manner of man it was to whom her parents were thinking of giving her. She sent her maid to watch for his arrival and the girl saw the fourth man. She jumped to the conclusion that this was the nephew and went back to report to her mistress. This circumstance prevented the ladies being suspicious and gave them a fresh topic of conversation and so delayed them further. But while the miscreants were preparing to cut the Sceptre, young Talbot Edwards came up. He was newly arrived on leave from his regiment in Flanders. The watcher stopped him, much to his indignation, and he went off to find his mother and sister. They went to speak to Edwards and could not find him. As they were searching, he recovered consciousness and his daughter heard a voice in the Jewel Room feebly calling "Treason. The Crown is stolen." They burst in and found him lying bathed in blood. The Sceptre had been cast aside but the three men and the Crown and Orb had gone.

The news of young Edwards' approach had alarmed the confederates, and they departed from the Tower as rapidly as they dared, without alarming the guard. Hardly had they emerged on to Tower Hill when young Edwards came up with the captain of the guard and raised a hue and cry.

Parrot found the Orb was hindering him, and abandoning it fled among the crowd and was lost. The other two men also found safety in flight. Blood with the Crown under his cloak had just remounted the horse upon which he had arrived. He set spurs to it and was all but beyond pursuit when his horse slipped and fell. Before he could rise his pursuers seized him, and at last he was in captivity. The Crown was retaken and the prisoner was brought back to the Tower. He had been in many tight corners before, but never so tight a one as this. He had committed a capital offence

and that not merely against a private citizen, but against the King, and this after many years of plotting and treason with a price upon his head.

The news aroused the whole town, who looked forward to a sensational trial to be followed by a public execution with all the thrilling barbarities to which they had become accustomed by the execution of the regicides. They waited with expectancy, but no trial seemed to be pending, and then to everyone's astonishment Blood reappeared in public, attending at Court, prosperous and in favour. How was it done? Everyone was curious, and soon it was whispered that Blood's audacity had once more pulled him through.

As soon as he was taken, he was brought before Dr. Chamberlain, whose duty it was to interrogate him after the custom of the day. Not a word could he get out of Blood except that he would say nothing to anyone save Charles himself. In this fix, Dr. Chamberlain called in Sir William Waller. He too was met with the same reply. Charles was naturally curious and to him was repeated the prisoner's refusal to say anything but to the King himself. The monarch was interested, and decided to humour the prisoner. Accordingly, due precautions having been taken, Blood was ushered into the Presence.

The interview justified his hopes. He took a high line. The plan was his he admitted, and he had adopted it to revenge his wrongs. He refused to say who his associates were, but threatened Charles with their vengeance if it befell their leader. The risk was great, he admitted, but then the prize was a Crown for which a man might well risk his life. This point would appeal to Charles, who, at Worcester, had risked his life for the Crown in another sense. As to the Ormonde outrage, Blood frankly admitted that he organised it for revenge. Then he played a master card. He told the King that he had gone to assassinate him while he was bathing at Battersea—then the Thames at that spot was a limpid stream—but had been restrained, though the King was at his mercy, because the sight of His Majesty had filled him with awe, and he was unable to do him harm. Charles admired the bold, unscrupulous adventurer, and granted him a pardon for all his offences. Moreover, he restored to him the forfeited estates. Thenceforth Blood was a man of means and of mark. He could appear openly in the streets where men would point

at him with wonder. No one else had done so much and escaped the gallows. The Duke of Buckingham introduced him to Court, where he frequently appeared. Ministers invited him to dinner, and thus it is that we have a description of him by Evelyn, who met him later in the year at the Treasurer's house. The Treasurer was then the chief Minister of Finance.

"This man," wrote Evelyn, "had not only a daring but a villainous, unmerciful look, a false countenance, but very well spoken and dangerously insinuating." This gives us a clue as to the reason why Charles took such an extraordinary view of the crime. He was defied by an audacious flatterer, who went just far enough to excite admiration without incurring resentment. Evelyn mentions the belief that Blood owed his previous immunity to being a spy, since otherwise it seemed inexplicable.

Though received into favour, Blood did not turn his coat. Throughout the rest of his life he was classed as a Presbyterian and regarded as one who would take up arms if ever the extreme dissenting party raised a revolt. He was wont to associate with congenial spirits at an inn in Westminster Market. Most of them, like himself, had been officers in Cromwell's Army, and then in 1679 Dangerfield thought fit to confess that he had been suborned to invent a Presbyterian plot so as to further Papist designs. Blood, he said, was down in the list as the head of one section of the conspiracy, in charge of men who until the occasion were to act as messengers, and on a call to arms would lead the troops, when Blood was to be a Major-General. It is not necessary to enter into an unravelling of Dangerfield's testimony. It is at best suspect, but it does prove that Blood was then counted as he always had been, an active and determined Presbyterian.

He had been watched for years by men of less adventurous life and courage to see when he would make that false step which they felt sure would lead him to the gallows in the end. In 1680 it seemed that the day was at hand. He had quarrelled with Buckingham and was arrested on a charge of conspiring to charge his former patron with atrocious crimes. It seemed that he was tricked into speaking when it would have been wiser to remain silent. The Duke took proceedings and claimed £10,000 damages. Blood was committed into custody but found bail. Once more the town looked forward



to a sensational trial, and once again was disappointed. The prisoner fell ill, and after a short illness, died on 24th August, 1680. So tame an ending to such a life seemed unnatural. The rumour spread that the Court was being deceived by a sham death and burial. Consequently the coroner decided to hold an inquest. The grave was opened and the dead body of Blood was found lying in the coffin. At the inquest the body was duly identified, and was re-buried. No one had expected him to die a natural death, but throughout his life he had constantly disappointed expectations.

It remains to be stated that Edwards did not die. The wound though dangerous was not mortal. Charles rewarded his faithful servant, though not so generously as he did the assailant. Nevertheless the public interest in the Crown jewels so nearly lost rewarded him with many perquisites and he lived to a ripe old age, repeating to every questioner the story of the man who stole the Crown.

*The Trial of Green and Others for the Murder of  
Sir Edmundbury Godfrey*





W. W. Hogarth

MEETING OF A COMMITTEE OF THE HOUSE OF COMMONS AT THE PRISON IN 1729

See page III



THE REV DR DODD

## THE TRIAL OF GREEN AND OTHERS FOR THE MURDER OF SIR EDMUNDBURY GODFREY

THE murder of Sir Edmundbury Godfrey, was one of the great mysteries of crime, and though three men were convicted and hanged for his murder, many of its aspects remain mysterious to this day.

First as to the man himself. He was the eighth son of a family of twenty children, was educated at Christ Church, Oxford, and destined for the Bar. But though he entered at Gray's Inn he was never called, because he became too deaf for active practice. Being thereby deprived of a career, he took to trade, and prospered greatly as a woodmonger, with a wharf at Westminster, near Charing Cross. During the Great Plague of 1665 his active benevolence to sufferers ruined by the desert which fear of infection had made of London was rewarded by a knighthood. He was chiefly renowned for his merits as a magistrate. At that time justices were expected to take an active part in the detection of crime and the apprehension of offenders. Godfrey, though some carped at him as being fussy, vain and interfering, had earned the reputation of being the best justice in England. In spite of his activities he was everywhere known as a good neighbour, and lived at peace with the world, at least with all law-abiding citizens, and he was noticeably on good terms with the Roman Catholics.

Such was the man who, in the late afternoon of the 12th October, 1678, went from his house near Charing Cross to make a prolonged call near St. Clement's Danes. He was never seen again alive. His prolonged absence caused well-grounded fears for his safety, and it was suggested that he had been murdered by the Roman Catholics. It was hinted that the object of the murder was to burke inquiry into their treasonable practices. When, on the morning of the 17th October, his corpse was found in a ditch by the fields at Primrose Hill, public suspicion became certainty. An attempt had been made to suggest suicide. The dead man's sword

was in his body, as if he had deliberately fallen upon it. But this attempt only made matters worse. Even in those days surgical knowledge could pronounce with confidence that the wounds were inflicted after death, and that Godfrey had been violently done to death some days before. Obviously this was a case of murder.

Who were the assassins? In the then state of public opinion there could be no doubt that they were Roman Catholic plotters. Even before the body was found, steps had been taken to search for the offenders among the Catholic population. It seemed so obvious. For some little time before, one Israel Tongue had been suggesting a Catholic conspiracy; he had been joined by Titus Oates, and on 26th September, 1678, Oates had seen Godfrey; had lodged sworn informations with him, and the worthy magistrate was actively investigating the allegations. Besides that, he had disappeared on his way back along the Strand. But in the Strand stood Somerset House, not the present building, but its predecessor, the residence of the Queen, and a hive of Catholics. One of the men arrested was Praunce, employed in the Queen's service, and he had confessed, implicating a number of men in the actual commission of the offence. Three were seized—Robert Green, Henry Berry and Lawrence Hill; three more, of whom two, if not all, were priests, had made good their escape. And on 10th February, 1679, these men were indicted in the King's Bench for the murder. It was a trial *in banc*, before the Lord Chief Justice, Scroggs, whose reputation for vileness is second only to that of Jeffreys, and two puisne judges, Wild and Dolben. This trial was the first of a remarkable series which prove, not, indeed, the existence of a Papist Plot, but the intensity with which the people of England believed that there was such a plot, and the firmness of their intention to preserve the religious and civil liberties of England.

The Counsel for the Crown were an imposing array. The Attorney-General (Sir William Jones), the Solicitor-General (Sir Francis Winnington), Serjeant Stringer, and the redoubtable Jeffreys, then Recorder of London. By the end of the year four of the judges and counsel had lost their places. Scroggs and Wild had resigned, the Attorney- and Solicitor-General had lost their offices. Mr. Justice Dolben was dismissed in 1683. Stringer and Jeffreys had increased their

prospects. Stringer was promoted in 1679, and later became a judge. As in the case of Jeffreys, the Revolution proved fatal to his career. But in February, 1679, all these men were in power, and they all believed in the Plot. So did Parliament. So did the people. With that belief in high places, with the populace howling for blood, it is not to be expected that the prisoners would have a fair trial. The times were almost the worst in our history for prisoners charged with offences coloured by a political tinge. Everyone, including the prisoners themselves, knew what the result would be unless a miracle happened.

This was the story related by the prosecution, and if it be believed, then the prisoners were guilty : On 12th October, Green went to Godfrey's house, telling the maid that he had business with her master. He and Hill were both there that morning, and their purpose, it was suggested, was to dog Sir Edmundbury's movements. Soon after midday, Godfrey went to a house near St. Clement's Danes and stayed till past seven in the evening. To reach his house he would go along the Strand, passing Somerset House. And here conspirators were waiting to do him to death. As soon as the watchers reported him to be on his way, the prearranged scheme was put into execution. A man called the justice into Somerset House on the cry that two of the Queen's servants were fighting. At first he refused, thinking that it was an ordinary scuffle, but at last yielded to importunity and went through the gateway into the courtyard. As soon as he was fairly inside, the doors were closed. He went forward to a fight then being acted by Berry and a priest named Kelly. As he approached the fight stopped abruptly. Berry, who was a porter there, went to guard the Water Gate. Praunce was already watching the back gate into the Strand. As peace was restored, Godfrey's visit had ceased to have any object. He hesitated, and decided to go away. As he began to move Green came behind him and put a cravat round his neck and twisted it, much in the same manner as the thugs murdered their victims. As soon as he did this, Hill, Kelly and a second priest named Gerald threw themselves on to the victim, and soon they had to all appearance despatched him. Praunce came forward to satisfy himself, and noticed that his legs were twitching, and in order to make sure Green twisted the head right round. Father Gerald wanted to make



even more sure. He suggested running the body through with a sword, but the others objected because the blood could not be removed and would be visible to everyone the next morning.

Then came the ordinary difficulty. How was the body to be disposed of? A temporary hiding-place was easily found. The corpse was taken to Hill's rooms in Somerset House, and there kept for a short time. It was later shifted to another room, and on the Monday, two days after the murder, which was on a Saturday, it was removed to a third room, where it lay on the floor covered by a cloak. But removing the body from room to room within the limits of Somerset House was a mere temporary expedient, and soon it would become impossible to conceal its presence. Accordingly they hit upon the plan of removing it in a sedan chair. They procured one and put the body inside, forcing it into a sitting position. Berry was porter at the Strand Gate, and when a man stationed outside gave a prearranged signal that the coast was clear, Praunce and Gerald, acting as chairmen, carried the chair into the street. At Covent Garden they were so wearied by their unaccustomed toil, that they had perforce to stop. Hill and Kelly relieved them, and they went to Long Acre, where these two called a halt. Praunce and Gerald again took over, and thus they reached a spot near the Grecian Church hard by Soho. There they met a man who had brought a horse, upon which they set the body with its feet tied under the horse's belly. For greater security Hill mounted up behind, and thus they came to the fields by Primrose Hill. At a suitable spot they deposited their burden in a ditch, having first caused it to fall on Godfrey's own sword. Near the spot they left some of the dead man's belongings, and they carefully left all his money in the clothes, so that everything he had when last seen was found upon him or near him. Having thus prepared an apparent suicide, they left in the darkness of the night.

Early next morning the constable found the body, and the coroner was summoned. Two surgeons came and found that Godfrey had been dead for days, and were convinced that the wounds were inflicted after death. Indeed it is difficult to imagine how anyone could have hoped that the jury would find a verdict of *felo-de-se*. The neck was obviously broken by violence, and not by self-inflicted violence. No one

presumably would twist the neck of a man who had killed himself by falling on his own sword, and no one could do that so as to leave him in the position in which he had impaled himself. Nor could the deceased after all have thrown himself on to his own sword not once, but twice, after someone had broken his neck. Besides, a surgeon would obviously be summoned, and unless extraordinarily ignorant could not fail to see at once that the wounds were inflicted long after life was extinct. The point is material, since the priests and Praunce were men of education and standing. More startling than this act of stupidity, the offenders, so the prosecution alleged, wrote an account of the murder and called a convivial meeting of priests at the "King's Head" (or "Queen's Head") at Bow, to rejoice over the deed, at a time when a hue and cry after the Catholics was in its earliest intensity.

The first witness was Titus Oates. This was his earliest appearance in that capacity. He merely proved that he had lodged sworn informations with the dead man. Then Godfrey's friend, Thomas Robinson, a superior officer of the Court of Common Pleas, told how Godfrey had confided to him that he feared the investigation would lead to his becoming the first martyr.

Then came Praunce. He had been early arrested and examined by the Privy Council, who committed him to prison. While there, he made a confession, and was then released. Once released he retracted his confession, and was at once re-arrested. This induced him to change again, and he again confessed. He was once more released, but apparently kept under observation. The prisoners alleged that Praunce confessed under torture, but he denied this and said that he had retracted his confession because his life was in danger. So intent were the prosecution on establishing his credit that they called a Captain Richardson to prove that Praunce had told him that he withdrew his confession from fear, and also that he had become a Protestant. They also called Sir Robert Southwell to prove that Praunce had, without any hesitation, taken him to the various places he had mentioned in his confession. This impressed the Court immensely, though Praunce, by reason of his position, should know his way about Somerset House, and he would not be likely to name places in parts which he did not know. However that may be, Praunce gave his evidence as to the plot,

the murder, the disposal of the body and the merry meeting of the priests at Bow. Hill objected to the evidence as perjured by the witness's own retraction, but to Scroggs it was enough that that retraction was not an oath. As might be expected, the prisoners, deprived of counsel, made a poor show at cross-examination. Scroggs took the opportunity of forcing each prisoner to admit that he knew Praunce.

After him came William Bedloe, only second to Titus Oates in the subsequent prosecutions. He, too, was making his debut. He introduced himself with a short speech about his acquaintance with Jesuits and how they asked him to murder some man unnamed. Then he was set to make acquaintance with Godfrey. Soon after undertaking this task he met Father Gerald. On the night of the murder his Jesuit friends told him that an unnamed person was to be put out of the way. He asked who it was and was told that it was the man who had received the information from Oates and Tongue. They gave him a rendezvous at Somerset House, but the righteous Bedloe, realising that murder was afoot, kept away. On the Monday, however, he was taken to see the body and recognised who it was. He apparently never met any of the prisoners, though he said that on that occasion he had seen Green in the courtyard. Hill denied ever having seen him, and indeed he did not claim to know either Hill or Berry.

It is easy to form a confident opinion that Bedloe's evidence is a vague denunciation of unknown Jesuits, trimmed to agree with Praunce. He had to be careful, because the Crown might not want more than one participant in the murder, and if he had confessed to a greater share in the crime his danger would be extreme. But he had not come forward to risk his neck. If believed, his evidence corroborates Praunce but is intrinsically worthless.

After him came the constable who found the body, and the surgeons. And the prosecution concluded with witnesses to prove that Hill and Green had been to Godfrey's house pretending business, that the prisoners knew and consorted with Praunce, Gerald and Kelly, and as to the congratulatory evening of the priests at Bow. During the closing stage the Lord Chief Justice made some characteristically unjudicial remarks as to the way the Papists committed perjury.

Then Hill called his evidence. The first was the house-

keeper at his place of service. She said Hill was trustworthy and never out after dark. Scroggs elicited from her the admission that she was a Papist and did not conceal his conclusion that she was capable of perjury. Jeffreys weighed in with an edifying hope that she did not spend the whole night with Hill. In the badgering that followed, she, by a slip, said that she and the family were out of town in October. The prosecution and the Judges were delighted. In vain she tried to correct it, and was supported by the maid, who was clear in her detailed statement that they were away in September. These two women lived in the house where Praunce said the body was first put. Their evidence that they were constantly in the room and that no corpse could have been placed there without their knowledge was met by a solemn statement from the Bench that it was indeed well for the maid that she was not indicted. That may do for the trial, but it is the fact that three respectable women (for a second maid gave similar evidence) faced the ordeal of that trial to prove that the body was never there. If they were right, then Praunce's evidence was untrue on a point, where mistake was impossible, and if he invented one incident what becomes of his credit? The first maid, too, had to admit that her brother was a priest. A man named Gray gave evidence which told neither way. The next witness, How, called to give evidence as to Hill's movements during the day, tried to make the Court believe that he was a Protestant. He was caught out and mangled in cross-examination. Other witnesses were called as to Hill's movements. One spoke of the night when Hill was arrested. Scroggs failed to see the relevance of this, till Hill explained that it showed that he knew that the murder had been discovered in ample time to escape, had he been guilty. The judge countered this point with "And so you would, if you had thought they would have been so nimble with you." Hill's last witness was as to character, and came after Green's evidence had begun. The judges at once attacked him as to his religion. He led them on, and they were sure that they had caught another Papist, but the Attorney-General, seeing that they were about to fall into a trap, informed them that this man was a Protestant.

Green called his landlord and his landlord's wife and the maid. They were hazy about dates, and finally the wife,

by making a calculation, hit what was obviously the wrong day.

Then Berry, the porter, took up his defence. He called Corporal Collett, who swore that no sedan chair left by the Strand Gate of Somerset House on the night of 16th October. He was supported by the sentinel, one Trollop. If this evidence were true, then the whole story of the disposal of the body was a lie of Praunce's. The judges tried to get them to admit that they were away tipping, but they denied this. No attempt was made to suggest that these men were not on guard, or to call any rebutting evidence on this point. At this stage Mrs. Hill was allowed to suggest that Praunce had been tortured. She was not ejected for the interruption, but Praunce was recalled to deny it. She also complained that the Court merely laughed at the witnesses for the defence.

After these witnesses came the speeches. The Attorney-General excused himself from making a long speech on the ground that the prosecution had proved stronger and the defence weaker than he could have foreseen. The Solicitor-General followed, mainly devoting himself to vindicating Praunce.

Scrogg's summing-up was not long and need not be described. At one stage Berry interrupted to say that he had never spoken to the dead man in his life. The judge retorted: "You must say and believe what your priest would have you." It would have been more effective to have reminded Berry that no one had ever said that he had. Scroggs conclusion was:

"But in short, there is a monstrous evidence of the whole plot itself by this fact; for we can ascribe it to none but such ends as this that such a man must be killed; for it must be either because he knew something which the priests would not have him to tell, or they must do it in defiance of justice and in terror to all that dare execute it upon them, which carries a great evidence in itself and which I leave to your consideration, having remembered as well as I could the proofs against them and all that is considerable for them. Add to this the condition that we are all in at this time and the eagerness of the pursuit that these priests make to gain the kingdom, that for my part I must put it into my Litany, 'That God would deliver me from the delusions of Popery

and the tyranny of the Pope,' for it is a yoke which we who have known freedom cannot endure and a burden which none but that beast who was made for burden will bear. So I leave it to your consideration upon the whole matter, whether the evidence of the fact does not satisfy your consciences that these men are guilty. And I know that you will do like honest men on both sides."

After this plain hint the honest men retired, but soon came back with a verdict of "Guilty." Scroggs expressed his concurrence, saying, "If it were the last word I should speak in this world I should have pronounced them 'Guilty,'" and at this the bystanders broke out in rapturous applause.

Next day the prisoners were sentenced in due form by Mr. Justice Wild, and ten days later they were all hanged, protesting their innocence till the last.

After this for some months Oates, Bedloe, Dangerfield and others were busy denouncing Papists, many of whom were tried and executed. Oates at last got too bold. He even attempted to accuse the Queen. Finally Scroggs himself refused to believe Oates. In 1680 came the constitutional struggle over the Exclusion Bill. Then followed a reaction in which James, a declared Catholic, was allowed by Charles, a secret one, to wreak vengeance on Oates. He was cast in £100,000 damages for libel, and, convicted of perjury, was sentenced to lifelong imprisonment with intervals of whipping at the cart-tail and the pillory. After the Revolution he regained his liberty and was given a pension, but his credit was hopelessly gone. William of Orange had no need for a perjurer like Oates.

Were these men guilty? The trial goes for nothing. It was a travesty of justice, but an unfair trial is no evidence of innocence. If Praunce be believed, then they were all implicated in the murder, but Praunce is discredited not only by his repeated confessions and withdrawals, but also by the contradiction of his story in two capital respects. Besides, what could be gained by murdering Godfrey? It is true Scroggs suggested terror, but prisoners and criminals have always realised that that weapon is potent only against witnesses, and the witnesses remained unmolested. It is indeed possible that investigation, if pursued, might have revealed a plot—not that concocted by Oates and his crew, but a real one—but even then no Government would have

stultified itself by paralysis before the murder of a mere justice of the peace.

It is indeed doubtful whether there was a plot, but the probability is that some conspiracy was always on foot. The penal laws against Catholics, which could not be removed so long as Parliament remained in its temper, and the fact that James was an avowed Catholic, might, and probably did, lead many Catholics to plan the gaining of religious freedom by overthrowing the Government and substituting autocracy. That there was a real danger, instinctively perceived by the nation, the subsequent history of James's reign proves to the full. But an impartial observer is left with the uncomfortable feeling that Oates and his colleagues, or unscrupulous men behind them, may perhaps have committed the murder in order to rouse popular feeling against the Catholics. Whether that be so or not, can never be settled. The murder of Sir Edmundbury Godfrey must remain an insoluble mystery.

# *Lord Mobun*





## LORD MOHUN

CHARLES BARON MOHUN, of Okehampton, who flourished under William of Orange and his successors, was a dissolute young man, given to tavern haunting and low society. One evening in December, 1692, a friend of his murdered Will Mountford, the actor of Drury Lane Theatre, in Lord Mohun's presence, and, as was alleged, with his lordship's countenance and support. The murderer fled, but the peer was taken and charged with the murder. Thus it was that on 31st January, 1693, the Marquis of Carmarthen sat as Lord High Steward at Westminster Hall, commissioned by their Majesties, with his peers to try the offender. This solemn assembly with all its ceremony was necessary because, as is well known, a peer of the realm who is accused of treason or felony cannot be tried by judge and jury, but must come before his fellow peers who alone can say whether he is guilty or no.

It was a disgraceful business. The man who actually killed the actor was a Captain Hill, a friend of Mohun's, who had seen and admired the beautiful Bracegirdle, one of the leading ladies at Drury Lane. He became enamoured and made advances to her, which she repelled. Probably these approaches were not matrimonial, since the Captain attributed his failure to the fact, as he alleged, that the lady was the mistress of Will Mountford. The actor alone, he believed, stood between him and the beauty's favour, and feeling insulted by this preference, he swore to be revenged. There was no proof that his suspicions were right. Mountford was a married man living with his wife, who knew Miss Bracegirdle. But the actress inflamed his desires more vividly than the actor roused his anger, and he set himself with his noble friend to gain her by force and fraud. Accordingly, on the evening of the 9th December, 1692, the two friends ordered a coach to be in readiness in Drury Lane at nine at night, with armed men adjacent in case of trouble. They then proceeded to a tavern, the "Three Tuns," in Chandos Street,

where they dined with an unmarried lady named Elizabeth Sandys. Their conversation was loud and unrestrained. Having settled to their satisfaction the terms on which Mountford was with Mrs. Bracegirdle (the term "Mrs." was not then appropriated exclusively by married women), and thereby besmirching the lady's reputation, they talked about a plan they had of seizing her and taking her into the country. Hill said the armed men were ready, and Mohun expressed the opinion that the affair would stand Hill for £50. Apparently the idea occurred to them that Mountford would attempt to protect the lady, since Hill exclaimed, "If the villain resist I will stab him," and Mohun rejoined, "I will stand by my friend!" After this burst of melodrama, they went to the theatre, only to find that the lady was not billed to appear that night. They went from the pit on to the stage, and the man who took the money requested extra money, as they had only paid for the pit. They refused, Mohun adding that if he brought any of his masters he would slit their noses for them. The man knew them well as habitués of the theatre, and he noticed that they had exchanged coats.

There was nothing to be gained by staying at the theatre, and having learned behind the scenes that Mrs. Bracegirdle was supping with her friends the Pages in Drury Lane, the two young men went there with their retainers and waited in the road until 9 p.m. Nothing had happened, and to make sure they sent the coach to Howard Street, off the Strand, where Mrs. Bracegirdle lived. The coach returned, and, satisfied that they had chosen her resting place, they waited. At 10 o'clock the lady came out with her mother and Mr. Page, prepared to walk home. A little way down Drury Lane they saw the coach in which (though they did not know it) sat Lord Mohun with several cases of pistols. Hill and his men were lurking near, and, when the party reached the coach, the door of which stood open, they rushed forward. Hill seized the actress and tried to force her into the carriage. She struggled, Page intervened, and was knocked down for his pains, but the mother clung to her daughter and delayed the abduction so long that help came and the whole design miscarried.

What happened then is not quite clear. The henchmen were dismissed, but the two principals proceeded with the party to the house in Howard Street. Apparently they were

endeavouring to explain their conduct and make their peace, but without success. On the way Hill swore that he would be revenged, but did not say on whom.

On arriving home Mrs. Bracegirdle's party went indoors, but not the two. They remained outside with drawn swords walking up and down. It seems that they insisted upon seeing the lady to demand her pardon, and would not depart until she had so far relented as to see them. She did not see them and one may guess that they were sufficiently tipsy not to realise either their duty as titular gentlemen or their interest as foiled villains. So they paced up and down the street, importunate for pardon. It was dark and cold, and they felt they needed stimulants. They sent for wine, and drank it in the street. So two hours passed. The watch came by, and asked Lord Mohun why his sword was drawn. He deemed it sufficient answer to say that he was a peer of the land. When Hill was asked the same question, Lord Mohun answered for him, that he had lost the scabbard. The watch deemed it best to make more inquiries, and went for convenience to an alehouse near-by. It was then near midnight.

The Bracegirdles were alarmed that Hill meant to do Mountford a mischief, and sent to his house in Norfolk Street, a road which crosses Howard Street, to warn his wife. He was not at home, and the messenger went to the end of Howard Street in case she would find him. It was not his direct way home, but as ill luck would have it, he came along at midnight, just as the watch was in the alehouse. The messenger tried to stop him, but he brushed past her—perhaps mistaking her motive—and went towards the waiting pair. The path there was paved; the road was not. The two were on the path, and there Mountford met them. Lord Mohun greeted him, and said, "I suppose you have heard about the lady." To which the actor replied, "I hope my wife has given your lordship no offence."

"No," said Lord Mohun. "It's Mrs. Bracegirdle I mean." And Mountford rejoined: "Mrs. Bracegirdle is no concern of mine, but I hope your lordship does not countenance any ill action of Mr. Hill."

At these words Hill came forward, and according to the prosecution, boxed Mountford's ear, and as the assaulted man growled, "Damme, what's this for?" thrust him through and through with his sword. Mountford called out,

"He has killed me," and fell in the roadway. The watchers in the windows raised the cry of "Murder." The watch came out of the tavern, and found the wounded man lying in the road and Mohun on the pavement. Another account was that Hill thrust at Mountford, calling on him to draw. Others called for the defence said that both men crossed swords and fought. All agreed that Lord Mohun remained upon the pavement and that by this time he had sheathed his sword. After the watch came the constable, but Hill made good his escape before any of them came.

What was the design of the two men in walking up and down outside the beautiful actress's house? Was it to meet and wreak vengeance upon Mountford? It is hardly probable, since they did not know that he was within, and his way home from Drury Lane would not normally be by Howard Street. Was it, as Lord Mohun alleged, to persuade Mrs. Bracegirdle to see them and receive their humble requests for pardon? It sounds improbable, but if it is assumed that they were tipsy, it is not impossible and no better explanation was given. The point is of importance. If the two men were waiting for Mountford with their swords drawn, then it is obvious that they had a common design against him, and each would be answerable for what the other did. It would in that case be no answer to say that Hill's was the hand that did the deed. If, on the other hand, they were in a maudlin state of penitence, importuning for pardon, then the meeting with Mountford was a chance affair. Hill's deed was then his own sudden act, for which Lord Mohun need not answer.

Hill's footboy had said before the coroner that when Hill drew, Mohun said that he would stand by his friend, and a witness had heard a boy in the dark implore one whom he called "My Lord" to alter his resolution. At first sight, too, it might seem that Mohun detained the man in friendly talk so that the other might the more easily run him through. But then, why did he not, like Hill, escape while yet there was time?

The watch came and he stayed. The constable arrived and he was still there. Mrs. Page called on the constable to arrest him and he made no effort to resist. As the constable arrested Lord Mohun, Bassett, one of the watch, seized him by the sleeve, and said he to the prisoner, "you shook and quaked

and trembled as if you would tear it to pieces." He was taken to the Round House and there inquired for Hill. On learning that he was not to be found, he said, "God damme. I am glad he is not taken, but I am sorry he had no more money about him. I wish he had some of mine. I do not care a farthing if I am hanged for him."

The constable heard that Mountford's sword was broken, and searched and found a piece of sword in the road.

Mountford lingered until one o'clock the next afternoon. His wound was mortal, but he was able to tell Bancroft, the surgeon, "My Lord Mohun offered me no violence, but whilst I was talking with my Lord Mohun, Hill struck me with his left hand, and with his right hand ran me through before I could put my hand to my sword."

When he died, the coroner sat with his jury and found a verdict of wilful murder. An indictment was preferred at Hicks' Hall, where the Grand Jury of Middlesex sat to find bills, and on their finding a true bill, the indictment was removed to the Court of the Lord High Steward.

Accordingly, on 31st January, 1693, the Lord High Steward assembled with his retinue and followed the peers to Westminster Hall. Sir John Somers, Attorney-General, Sir Thomas Trevor, Solicitor-General, and Serjeant Thompson, appeared for the Crown. The prisoner was not allowed counsel except to argue a point of law, and in case any point should arise Sir Thomas Powys, Mr. Hawles and Mr. Price had been named to argue for him. But unless such an event happened they could neither advise him nor aid him in any way. Even Judge Jeffreys had protested against the harshness of a rule which denied to a prisoner the legal aid which the Crown freely used against him, and soon afterwards the rule was changed.

After silence was proclaimed the Royal Commission was read, and the Deputy-Governor of the Tower was commanded to produce his prisoner. Lord Mohun came to the Bar of the Court accompanied by the Gentleman Gaoler who bore the axe with its edge turned away from the prisoner. If the accused were convicted then its edge would be turned towards him. He knelt; the indictment was read and the prisoner pleaded not guilty. Serjeant Thompson explained the effect of the indictment and then Sir John Somers rose and made the opening speech for the prosecution. It was short, clear and temperate, a great contrast to the unfair violence of the

law officers in the last reign. Then one by one the witnesses came and gave evidence. Lord Mohun was entitled to cross-examine, and he availed himself of his right, not indiscriminately or injudiciously. He contented himself with cross-examination of those witnesses when he thought it might help him, and confined his questions to the point he sought to make. The skill and discretion he showed proved at least that he was a man of ability, who might, if he had chosen, have taken a proper place in the debates in the Lords. Thus when Elizabeth Sandys told of the wild talk at the "Three Tuns" he merely asked her if she were married, and was content with her answer that she was not. His main point was that he had taken no part in the scuffle. This he put to several witnesses, who all agreed. He also sought to show that he made no effort to escape, and this the witnesses again accepted, though Bassett, the watchman, by his answer already quoted, plainly intimated that Lord Mohun was paralysed by fear.

When the prosecution had done, Mohun called his witnesses. The first was Thomas Lake, Hill's footboy, who was there. His story was one of a fight between Hill and Mountford, both with drawn swords. Sir John asked him whether he had not sworn before the coroner that when Hill and Mountford were pushing, Mohun had said he would stand by his friend. Later on Somers produced the deposition which contained that statement. The witness also denied that he was the boy who said, "My Lord, alter your resolution."

Next came Elizabeth Walker, Mrs. Bracegirdle's maid. The prosecution had been searching for her ever since she had been to Hick's Hall. She said she went away because the players threatened her, but, reading between the lines, it is probable that she had been in Hill's interest both before and after the affair of the 9th. In any case, when she left her employment she had kept in touch with the defence. She was questioned more than once about her departure, but maintained throughout that it was because she had been threatened. It was she who took possession of Mountford's sword which several of Mohun's witnesses said was broken in the fight, but this valuable evidence was not produced. All the witnesses for the defence swore that both men fought with swords drawn, save one, who was called merely to prove that

Lord Mohun had commended Mountford's acting and that very week had invited him to come and drink wine. Elizabeth Walker said that she had never "seen men naked fighting so before," at which there was a great shout of laughter. She explained that she meant men fighting with naked swords.

At the close of the evidence Sir Thomas Trevor, the Solicitor-General, summed up. The general burden of his argument was that the evidence proved a common design of the prisoner and Hill against the dead man. During his speech a lady in the gallery had a fit, and the proceedings had to be suspended until she could be removed. He concluded that Hill committed murder, while Lord Mohun stood by his friend without offering to part murderer and victim; and he submitted that it was established that Lord Mohun was privy to Hill's design. When he had done, the Lords adjourned.

The next day there was much private debate among their Lordships, and the Judges were sent for. When they arrived the Court assembled, and put a point of law to the Judges, who were headed by Chief Justices Holt and Treby. They desired to withdraw to consider their answer, but leave was refused. It then occurred to someone that prisoner had Counsel for the express purpose of arguing points of law and each of the three addressed the Court. The Attorney-General in effect declined to argue on the other side. He said that before arguing the law one must know what the findings of fact were. Then the Judges declared their opinion that merely being in the company of the murderer did not of itself render his companion equally guilty of murder. Various of their lordships were anxious to know how the law stood on various hypotheses, and these were argued by prisoner's counsel and the Judges delivered their opinions. The sitting began late, and when these discussions ended, the Court adjourned.

On the 4th February, the Lords reassembled and voted on the indictment. The Lord High Steward called on them one by one, beginning with the junior peer. As each was named, he answered, placing his right hand on his breast, "Guilty, upon my honour," or "Not guilty, upon my honour." Lastly the Lord High Steward gave his vote. It was early seen that the majority were for an acquittal. At the close of the vote, the Lord High Steward called Lord Mohun and informed him that he had been acquitted by 69 votes to 14



and was discharged. Silence was then proclaimed and a proclamation read dissolving the Commission. As the last words were pronounced the Lord High Steward held the White Staff above his head in both hands and broke it in two, and their lordships proceeded in solemn state to the House of Lords.

Lord Mohun's defence had indeed involved the admission that he had been engaged in a scandalous and criminal conspiracy to abduct Mrs. Bracegirdle, but as he was not charged with any such offence, he escaped scot-free. It should have been a lesson to him, but seven years later he again stood before his peers to answer a second charge of murder. On this occasion the Lord High Steward was Lord Somers, who had in the meantime become Lord Chancellor, but was on the eve of resignation. Sir Thomas Trevor, the former Solicitor-General, had succeeded Somers as Attorney-General and led for the prosecution. He was assisted by Mr. Cowper, himself one day to sit upon the Woolsack, and curiously enough, destined before then to come as a witness for his own brother on a charge of murder.

Nor on this occasion also was Lord Mohun the man who had inflicted the wound. His trial followed that of the Earl of Warwick, who was convicted of manslaughter, and pleading his clergy, was by the singular survival of the mediæval respect for ability to read, allowed to go free.

The affair having occurred in the dark in Leicester Fields, no clear account was forthcoming, but it was clear that in a threefold duel there Captain Coote had been killed and Captain French wounded.

On the evening of Saturday, 29th October, 1699, a select party were drinking at the "Greyhound" in the Strand kept by one Locket. At first they were five in number, the Earl of Warwick, Lord Mohun, Captains Coote and French and Mr. Dockwra. During the evening Captain James arrived. The carouse lasted until one or two on the Sunday morning. Then coaches were sent for, but none were to be had, so they sent for sedan chairs. While they were waiting a quarrel arose and swords were drawn. It seemed to the observers that the two peers and Coote were ranged against the other three. When the six chairs arrived, each man got into one, and they proceeded in the pitch dark as far as the Strand end of St. Martin's Lane. There they halted and Lord Mohun tried to

persuade Coote to go home, but he insisted upon going on with the business, which was obviously a duel, and accordingly the chairmen went to the spot where Green Street runs into Leicester Square. There they were dismissed, but, scenting further employment, did not go away. Instead they proceeded along the fields until they reached the top. In the dark they heard the sound of fighting, and soon men approached calling out "Poor Coote," or some similar words. These men were James and Dockwra, supporting between them French, who was badly wounded. They hailed the chairmen and took French to a bagnio in Long Acre. The affair was too open and notorious to escape the notice of the watch. Coote's body was found and taken to the watch house in St. Martin's Lane. He was quite dead and had been run through twice with a sword. Lord Mohun was afterwards found to have a slight wound in the hand. He was arrested and again came before the Lords for solemn trial in the manner already described.

The evidence merely established the facts which I have stated. Lord Mohun's statement in defence threw little more light on the affair. He said in effect that he had not wanted to fight and had only gone after exhausting all efforts to induce the others to abandon the affair. Certainly if he had drawn back then, he would, according to the code of honour of his day, have shown himself a poltroon. The Lords, eighty-seven in number, unanimously pronounced him to be Not Guilty. When informed of the verdict Lord Mohun promised reform, and he kept his word. Although he lived for many years he never again offended against the law, but lived a quiet, steady life.

Was he guilty? After a careful study of the evidence on both sides, I think that with regard to Mountford the acquittal was right. It is true that reading the record is no sufficient substitute for hearing the witnesses give their evidence, but, making all allowances for that defect, the impression left upon my mind is that it was a case of suspicion, indeed of grave suspicion, but the prosecution does not satisfy me beyond all reasonable doubt. It is highly probably that there was no design against Mountford, that the meeting was by chance and that Hill acted without premeditation. It was an affair of seconds, and, unless Lord Mohun realised what was toward, and aided and abetted the murderer, then whatever crime he had committed that night he was guiltless of murder. In the

matter of Coote, I do not agree with the verdict. Although he went reluctantly and after dissuading the others, yet he went to a murderous fight voluntarily and took part in it. According to our modern ideas, such acts on his part would undoubtedly lead to his conviction. One may note with moderate satisfaction that he learned a lesson and profited thereby.

# *The Trial of Spencer Cowper*



## THE TRIAL OF SPENCER COWPER

**I**N the days of William of Orange the judges still rode circuit attended by their officers and accompanied by the barristers of the circuit. It was on a Monday (the 13th March, 1699) that the Lord Chief Justice, Sir John Holt, rode with his train into Hertford to hold the Assizes. With him came a numerous company, of whom three were in consequence doomed to come to the next Assizes—not to see the prisoners stand their trial, but in their own person to experience the ordeal of standing at the bar charged with murder. These three were William Cowper, a member of the circuit attending in the ordinary course of his practice; Stephens, an attorney who held the office of Clerk of the Paper in the Court of King's Bench; and Rogers, another attorney, who was Steward of the same Court. At Hertford they separated to engage their lodgings.

Spencer Cowper was then a young man of thirty, recently married, and not long called to the Bar. His elder brother (William) was a leading member of the circuit, and represented Hertford in Parliament. On this occasion the elder Cowper was detained in town, being "in the money chair" at the House of Commons. He had a standing arrangement to take the best lodgings in the town with a Mr. Barefoot. On this occasion he had forgotten to inform his landlord that he would not be coming, and in consequence his rooms were ready and he would have to pay. The two brothers were on very affectionate terms, and when Spencer learned that the lodgings were prepared he decided, money being an object with him, to make use of them, and accordingly did not occupy his usual rooms at the house of a Quaker widow, Mrs. Stout, who lived there with her two children, John and Sarah. The daughter was a handsome young woman of a romantic disposition, little inclined to the quiet, uneventful existence of a Quaker family in a country town.

Spencer Cowper knew Hertford well. His wife usually lived there, and he spent most of his vacations with her. They were both on friendly terms with Mrs. Stout, and thus

it was that when William did not go on circuit and had remembered to cancel his lodgings, Spencer stayed with the Stouts, who on this occasion were expecting him. He did, indeed, send his horse, with a message that he was lodging elsewhere. Mrs. Stout invited him to dine and spend the evening. He accepted, and eventually went away at eleven at night. After his leave-taking Sarah was missed. Her mother and the maid stayed up to await her, but she did not come. She was never seen alive again.

After the Judge had arrived, Stephens and Rogers secured lodgings with a Mr. Gurrey. To them in the late evening came another attorney named Marson. He was an attorney in the Southwark Borough Court, where he had been detained by a case. Gurrey repelled him, though he pleaded that he had just arrived. It was about eleven, and he had been in Hertford since eight. The other two were friends and overruled Gurrey, and the three sat down to three quarts of wine. They discussed the business that had detained Marson, and how much he had made out of it, and in the course of their talk, Sarah Stout's name came up. One of them wanted to see her and rallied Marson for having been her sweetheart. He had a bundle with him and made curious observations about the girl. At length the wine being finished they went to bed.

Next day the Assizes had to compete with another sensation. Early that morning Sarah Stout's body had been found floating in a milldam some two miles from home. There was an inquest, at which Spencer Cowper gave evidence, and before it was over he sent for his horse, though he was not travelling that day. The jury found a verdict of suicide while insane. Later in the day Cowper and the three attorneys made a country excursion together.

Assizes at Hertford do not seem to have lasted much longer than they do to-day. By Wednesday the business was concluded, and Sir John Holt and the others took horse for Chelmsford. Among the train of the learned Judge was Spencer Cowper.

The whole affair had so far run the normal course of these pitiful cases. A girl had disappeared, her body was discovered in the water, and the coroner's quest had found that she had drowned herself. But though she lay buried, her story was not all told. Hertford was torn with faction, and the opposition had not any advantage from this occurrence.

The Quakers were incredulous, since suicide among them was unknown. Soon people began to ask whether the matter was quite so simple. Did a body float so soon after death? Sarah Walker, the maid, began to whisper that all had not been well, and like wildfire there ran through the town a rumour as baseless as it was cruel: that Cowper had taken advantage of her, and then had murdered her to avoid the consequences of their illicit affection. Then there were some strange marks on the body—soon they became clear marks of strangling. The Gurreys added their quota. One of their guests of the Assize had said that a friend would be “even with her by this time.” He had said that he had £50 for his share. Besides, not only did he have a bundle unlike one of an honest man, but he had said he had just arrived, though he had been seen openly in the streets by others just three hours before. On the day the body was found, too, they had acted more strangely. Not only did they go to see the body, but on the way Rogers had told Gurrey to take up Marson for his words of the night before. And then, to crown all, had not Cowper joined these three men on a jaunt to Hoddesdon on the Tuesday evening?

It was decided to exhume the body, and accordingly six weeks after her death the poor girl was taken from the grave. Examination showed that the rumours against her virtue were slanderous inventions, but as she had little or no water in her stomach the local physicians concluded that she had not been drowned, an opinion aided, so some suggested, by their political antagonism to William Cowper. No sooner was this opinion made known than the populace concluded that Sarah had been cruelly murdered, and by no other than these four men.

Naturally the authorities could not ignore so public and pointed an accusation. The Lord Chief Justice himself examined the witnesses, and committed Spencer Cowper and the three others for trial. Accordingly, in July, 1699, when Baron Hatsell attended to hold the next Assizes, these four were in the town, not as in March, attending on the Lord Chief Justice, but as prisoners, awaiting trial. It is a curious circumstance that Hatsell was sent to this Assize. He was so incompetent that when Queen Anne ascended the throne he was superseded. He gave a finished exhibition of his incompetence on this occasion. He certainly was not chosen because of his leaning towards the prisoners, for during the



hearing on several occasions he hindered Cowper from developing the defence properly.

On the 16th July, 1699, the crowded court saw the unusual spectacle of four lawyers being arraigned for murder. In those days counsel were not allowed to prisoners charged with felony, but here that was the case only in name. Spencer Cowper was an advocate of ability, and it may be conceded that he had every motive to throw himself whole-heartedly into his case.

The prosecuting counsel was one Jones, who, though unknown to fame, knew his work. He undertook to prove that Sarah Stout was murdered, and laid stress on the fact that Spencer Cowper was the last person with whom she was seen alive, and dwelled on the incidents connecting him with the other three, and on their dark sayings on the first night of the last Assizes.

He then called Sarah Walker, Mrs. Stout's maid. She was a confident, but lying, witness. Mr. Cowper was lodging at Mrs. Stout's. There was no doubt about it. At eleven she was sent up to warm his bed, and while she was upstairs the door slammed. When she came down Cowper had gone, and so too had Sarah. It was 11.15 when she came down. In cross-examination she admitted that she had said 10.30, but explained that the clock was half an hour fast. This would make her return downstairs 10.45. Sarah Stout had been ill and moping. The maid was then asked about buying poison. Yes, she had done so twice. It was white mercury to kill a dog. The other maid administered it. That was why she told the Lord Chief Justice that she had given it herself, because she was there. What dog it was she did not make clear, and she certainly did not know what had become of it. Nor could she explain why she had gone to Barefoot's to invite Mr. Cowper to dine with Mrs. Stout.

The next witness, James Berry, had found the body. The water was thick and only some clothes showed on the surface. The body was five or six inches under water, and one arm was through some stakes. The eyes were open, no marks or wounds to be seen. Others who helped to take her from the water were called. One said that froth came from the nostrils and mouth.

Then came the medical witnesses. Medical jurisprudence in England was hardly yet born, and this trial is noteworthy

not only for the number of expert witnesses called but also by reason of some of them having performed experiments to qualify them. The doctors retained for the defence were allowed to come into Court to hear this evidence. The first was Dr. Dimsdale, a local practitioner, whose son was created Baron Dimsdale in 1728, as a reward for inoculating Catherine of Russia against smallpox. The witness described the marks on the body but could give no reason for them, save that those on the neck were the "settling of blood." He definitely denied that there was the circle round the neck that Mr. Jones had undertaken to prove. After him, Sarah Kimpton who had seen the body, "lank and thin." She had seen a child who had been drowned at the same place ten weeks before. He was found on the river bed, with eyes shut and body swollen. A midwife then proved that the dead girl was not pregnant.

Then Dr. Coatsworth. He had attended the exhumation. He was of opinion that the girl had not been drowned, because there was no water in the body. His examination seems to have been very superficial. After he had given evidence, Cowper objected because the exhumation was unauthorised and illegal. The judge overruled the objection, rightly saying that, even if the exhumation were illegal, the evidence was admissible. After Dr. Coatsworth came two more medical Dimsdales who confirmed his opinion for the same reason. The second of them had seen the body, already mentioned, in whom he found abundance of water.

Now the first Dr. Dimsdale was recalled to admit in cross-examination that Dr. Camblin had disagreed about the drowning, and that high words had passed between them on the matter. Coatsworth, too, was recalled. He said drowning was caused by suffocation through drawing water into the lungs. Much water would naturally be swallowed. He knew this because when he was nearly drowned, he had swallowed a lot. If the body were removed at once after drowning, then, he conceded, there might be little water in the stomach. If the body lay in the water several hours the belly must get full. He could not say that the reverse was impossible. Cowper did not follow this up, but his object will be seen later on. Finally, Dr. Coatsworth said that he had known several cases of drowning, but none where the body floated so soon.

At this stage the Judge said that Sir Thomas Browne had a

chapter on this subject in *Vulgar Errors*, but that he, the Judge, did not understand it. He afterwards proved that he really did not, and this gives us a standard by which to measure him. The chapter should be understood by anyone of mediocre intelligence.

Dr. Nailor's evidence was chiefly remarkable in that he was cross-examined as to his political opposition to William Cowper. Spencer said that he had meant to ask the same questions of the Dimsdales, but the Judge seemed to think that it did not matter at all.

After a surgeon named Babington had spoken of a woman who had lived for some hours after having been submerged and had vomited much water, the Judge contributed another remark. Bodies buried at sea, he said, had shot tied to them. This served to introduce two sailors. Edward Clement had served in H.M.S. *Cambridge* at the battle of Beachy Head. Then men who were shot and fell overboard floated. Those who were drowned sank at once. He had watched the wreck of the *Coronation* in September, 1691, from H.M.S. *Duchess*. The crew of the wrecked ship were swept off by twenties and they all sank at once. The other sailor was Richard Gin who said that bodies buried at sea always had weights tied to them. He was asked as to his war experience, but would only say that he had been in two sea fights against his will.

This, said Mr. Jones, was the evidence that Sarah Stout had not committed suicide. He then called evidence to fasten guilt on to the prisoners. After proving that Spencer Cowper had left Hertford on the Wednesday, he called Gurrey. This witness said that Stephens and Rogers had hired a room from him. Late in the evening, about eleven o'clock, Marson came in, heated and muddy, saying that he had just arrived from London. It is a curious fact that Marson did say this. He had arrived about eight and did not go to Gurrey's for at least two hours, but he explained that he said he had just come so as to get a lodging. It would have been far simpler to have set about that task on his arrival. Gurrey then detailed their conversation. Rogers and the others had asked if they could see Sarah Stout and had rallied Marson about her. On the Tuesday they went to see the body, and on the way, Rogers, pointing to Marson, said to him: "Landlord, you may take up that rogue for what he said last night." Later in the day he saw Cowper talking to Marson and Stephens. In

cross-examination he was forced to admit that he had expressed doubts about Sarah Walker's truthfulness. Mrs. Gurrey then detailed her doubts about Marson's bundle and how she found a cord by it. Elizabeth Gurrey came forward to say that she had heard Marson say that his share was £50. Then, after putting in Marson's deposition before the Lord Chief Justice to prove that he had admitted being in Hertford at eight on the Monday evening, Jones closed his case. There might have been some evidence against Cowper, but it is incredible that the Judge did not stop the case against the others.

No prisoner charged with a criminal offence could then give evidence, though they might make statements. Cowper was allowed to open the defence by a speech in which he commented on the evidence given and explained his movements. It only differed in name from a speech for the defence. He then called his witnesses. The first two were Dew the beadle, and Young the constable, who helped to take the body from the water. Dew explained how the arm was entangled in the stakes. The Judge here complained of Cowper's many questions, but they were all relevant and he was on trial for his life. After these two Cowper tendered the coroner's depositions, but the Judge ruled that they could only be used to contradict witnesses for the Crown. Mr. Jones, however, admitted that the verdict was suicide while insane.

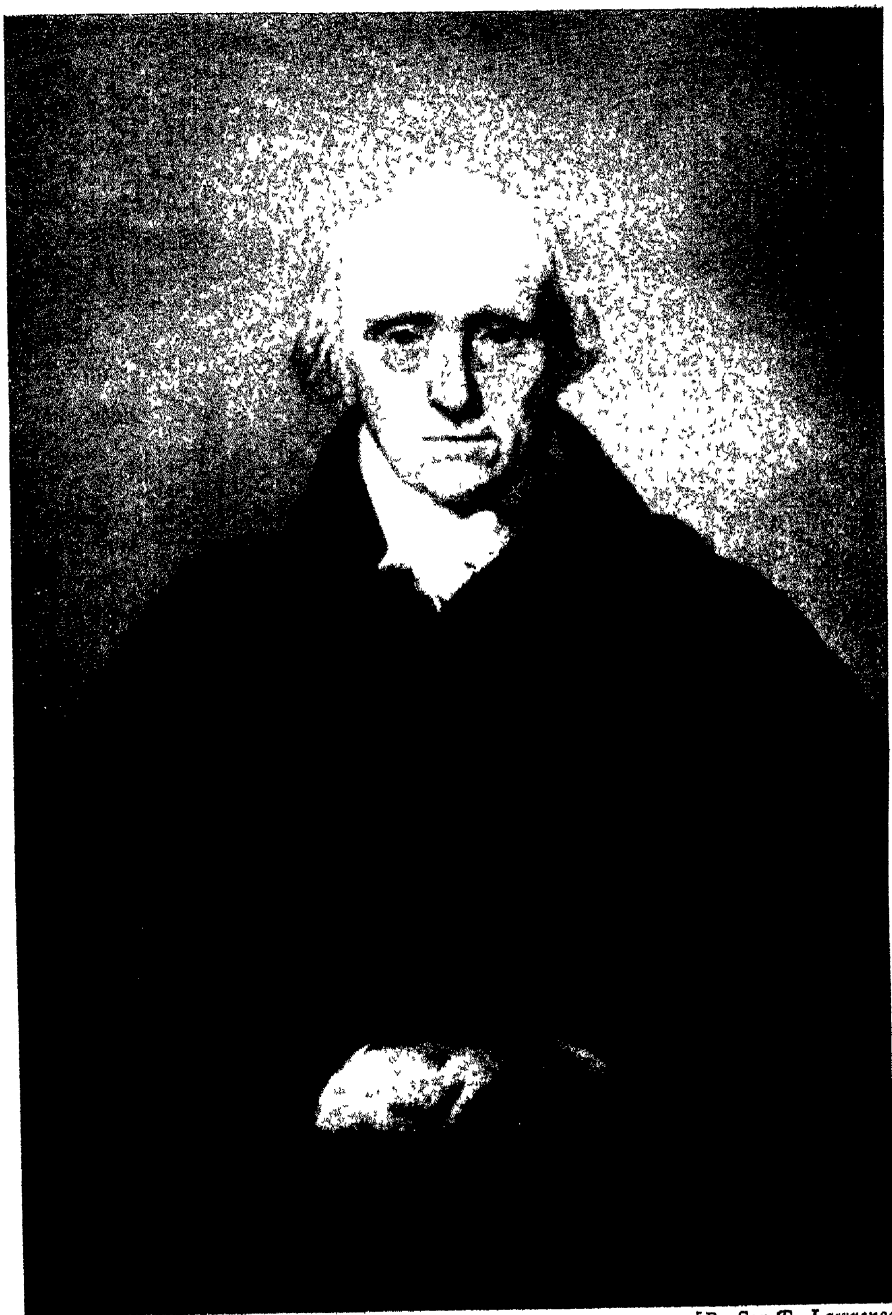
Now was the turn of the defence to call expert evidence. First came Sir Hans Sloane, the celebrated physician, who said that much liquid could be swallowed without suffocation, instancing drunkards and persons subjected to torture by water. On the other hand, a small quantity could suffocate, as had happened when patients took medicine down the wrong way. In his opinion the evidence was consistent with drowning. Dr. Garth expressed the view that it was as natural for a body to float sideways, as Sarah Stout had done, as for a shilling to stand on edge. It was, in fact, an odd thing that she had floated some inches under water, and, though it is not clearly stated, the point was obviously made that the body was supported by the arm which had got between the stakes. When Dr. Garth said that dead bodies usually sank, the Judge called his attention to the seamen's evidence about burial, but the witness explained that the weight used for a body buried at sea was sixty to seventy pounds, wholly excessive to sink it, but necessary to prevent the body rising after decomposition.

He added that seamen had many strange notions ; they even whistled for the wind. Dr. Morley gave evidence as to two dogs he had drowned the day before. One floated and had no water in its stomach. The other sank. The next witness was William Cowper, the discoverer of Cowper's glands, but, as the prisoner regretfully remarked, not related to him. His evidence was that when the head was under water the first breath drew in water, and the quantity that could be inhaled was but three ounces. This would cause suffocation and after that no water could be swallowed. This evidence showed that Coatsworth was ignorant. The swallowing of water precedes and does not follow drowning. Dr. Cowper had experimented on dogs. A smooth-haired dog, being put dead into water, sank at once. He had drowned three dogs, all had water in the lungs, but none in the stomach.

The prisoner then observed that the prosecution had made no suggestion of the cause of death if not by drowning, and the Judge agreed. But there was no legal point in this, since the prosecution had never been obliged to prove the exact cause of death. The Judge was getting impatient, and told Dr. Crell, who came next, to confine himself to his own experience. The witness promptly quoted Ambroise Paré, the celebrated French surgeon of the sixteenth century. Two Fleet surgeons then contradicted the seamen and the procession of experts was closed by Dr. Camblin who swore that at the post-mortem examination Dr. Dimsdale had agreed that the marks which were found were those of drowning.

It might have been safe to have closed the defence at this stage, but further and more dramatic evidence was to come. Cowper apologised for calling it, but the necessity of defending himself from a charge of murder had formed his excuse. Sarah Stout had long been secretly in love with him and at last had been unable to restrain herself from confessing it to him. He had gently but decidedly repelled her. After that he had carefully avoided meeting her, though she wrote to him and made attempts to come his way. After that she had been melancholy and ailing, discontented with her lot, and threatened suicide. Evidence was also given to explain his movements and to show that it was impossible for him after leaving Mrs. Stout's to have gone to the milldam and back to Barefoot's in the time.

After this the other prisoners made their statements.



*[By Sir T. Lawrence]*

WARREN HASTINGS

*See page 153*



THE HON HENRY ERSKINE

*See page 169*

They contained nothing new, except that Elizabeth Gurrey, the listener, had twisted the £50 share out of a remark by Marson that he had had 50s. for his case at Southwark, and that the mysterious bundle merely contained spare clothing, as might be guessed. They were cross-examined on their statements, a practice then usual but afterwards discontinued as a result of Lord Chief Justice Holt's objection to it. They called one witness, Mrs. Davis, Gurrey's sister. She proved that the three men came in about ten on the Monday evening and went to bed after drinking a quart of wine each. So they could not have gone to the milldam. Mr. Jones then made a final effort. He proved that at the inquest Spencer Cowper had sworn that he knew of no reason for the girl's death. Baron Hatsell then summed up. The case had gone on continuously since it began and he was plainly exhausted. He made a lame attempt to sum up, lamented his inability to follow the scientific evidence, and finally abandoned the attempt to guide the jury. They promptly acquitted all four, and there can be no doubt that they were right. They were discharged.

Nowadays that verdict would be final, but then there was a means of challenging a verdict on a Crown prosecution. The dead person's heir could "appeal" the accused, and if he did then the prisoner would have to stand his trial again just as though he had never been before a jury. This "appeal" was not in any sense the kind of appeal that we know now. It was then becoming so rare that judges usually directed a prisoner to be discharged on acquittal. If he did not, then it was taken that he disagreed with the verdict, since it was technically much easier to "appeal" a person in custody than one who had been set free.

Sarah Stout's mother had brooded over the tragedy so long that she had convinced herself, contrary to the evidence, that the prisoners were really guilty. It has been stated that only her scruples against taking an oath prevented her from giving evidence which would have conclusively proved Spencer Cowper's guilt. But the maid who was with her at the time gave evidence, and was an obvious partisan. We may assume that the suggestion is not well founded. She had also convinced herself that her cause was so righteous that she might stoop to deceit to gain her ends. The proper person to "appeal" was the heir, who was a mere child; his next



friend was his widowed mother, and she was not willing to prosecute the accused. Mrs. Stout tricked the widow into signing an authority to prosecute by inducing her to believe that it was a document necessary to get Sarah's belongings for her child.

On the production of this authority the Court ordered an "appeal" to be tried. Mr. Toler, the Under Sheriff for Hertford, received the writ and he not only showed it to the widow but let her handle it. The woman was horrified and promptly put the writ on the fire. Mrs. Stout applied for a fresh writ, but the only result was that Mr. Toler went to prison for contempt of court. The King's Bench judges would grant no further process, seeing that, as Holt, L.C.J., pointed out, the proper party had repudiated the authority to apply and no evidence existed to show that the accused had procured that repudiation. The prosecution then finally dropped.

The affair had at last convinced all thinking people that it was a case of suicide. Neither the Cowper family nor any of the other prisoners lost any reputation or esteem as a result of the trial. William Cowper became a law officer and eventually under Queen Anne attained the Woolsack. Spencer, after an honourable and successful career at the Bar, was made a Judge of the Court of Common Pleas in 1728. He who had once been arraigned on a capital charge was now entrusted with the duty of trying others so accused. He did not live long to fill his exalted office, dying later in the same year in the sixtieth year of his age. He has another title to remembrance. One of his grandsons was Cowper the poet, and it is interesting to note that impartial justice saved not only these innocent lives but also enabled us to enjoy those poems in which the world has so long delighted.

# *The Trial of Captain Kidd*



## THE TRIAL OF CAPTAIN KIDD

TO arrive at real pre-eminence as a pirate must always in any age have required a rare combination of force of character, recklessness and luck. To command a miscellaneous crew of desperadoes gathered together by chance, all of whom had forfeited their lives and had renounced obedience to law and order, must have been an ordeal which none but the strongest could survive. The exploits of the most famous of their leaders prove that under happier auspices they might have risen to fame in the legitimate service of their country. But it must be confessed that William Kidd, judged solely by his piratical career, did not display any marked ability, and cannot be ranked as a really great pirate. His claim to the notice of posterity rests upon two facts. First, that he, almost alone among their number, was sent out to catch, not to lead, pirates, but unmindful of his duty, turned from gamekeeper to poacher. The second remarkable circumstance of his career is that he nearly involved in his misdeeds no less a person than the Lord High Chancellor of Great Britain.

Before his one long cruise as a pirate he had a career of which no one need be ashamed. Born at Greenock, he was bred to the sea, and in the wars had commanded a privateer, fighting with courage and success. In one encounter in the West Indies his ship and its consort had emerged victoriously from a bloody combat with no fewer than six French privateers. Eventually he settled at New York, and traded in his own ship along the coasts of North America.

At the end of the seventeenth century pirates infested these coasts and caused great losses to the merchants of New England. A trading vessel which continually passed along the Atlantic shores of North America must needs fall in with them. Kidd, in fact, knew many of them and their haunts, which excites suspicion that he was of assistance to them; else how did he escape their marauding propensities? But at the time no suspicion attached to him, and he was accustomed, when in port, to interest his merchant friends by outlining plans whereby

the pirates could easily be suppressed. He was known as a skilful seaman, he was privy to the pirates' habits, he was experienced in the ways of sea warfare and had proved himself to be a courageous fighter. It was natural, when the authorities determined to tackle the problem of piracy seriously, that his claims for employment should receive early and favourable consideration. And so it fell out. In 1695 Lord Bellamont was appointed Governor of Massachusetts Bay, and he was instructed to take effective measures to suppress piracy. Before he sailed for America, Colonel Livingston, a prominent member of the New England community, had brought Captain Kidd to him in London and suggested his employment. Lord Bellamont agreed, and approached the Admiralty with the proposal that Kidd should receive a commission, and be given command of a man-of-war. The Admiralty vetoed the proposal, probably because all the available warships were needed for the war with France, which was then raging. After much discussion it was agreed that Kidd should sail as a privateer under letters of marque with a special commission under the Great Seal, authorising him to cruise against pirates. A small syndicate was formed to finance the scheme. The agreement is dated 10th October, 1695, and thereby a fund of £6,000 was to be raised. Livingston and Kidd agreed to find one-fifth, and the remainder was found by Lord Orford (First Lord of the Admiralty), Lord Somers (Lord High Chancellor), Lord Rodney (one of the Secretaries of State), and Lord Shrewsbury, who was one of the Lords Justices entrusted with the administrations of the country during King William's absence at the war.

A small ship of 150 tons, named *The Adventure*, was purchased and fitted out at Plymouth. She sailed on 1st May, 1696, with a crew of 80, and carried 30 guns. Her destination was New York, where she arrived in July, with a French ship which she had captured as a prize on the voyage. At New York, Kidd gave out that he was bound for Madagascar, which was then a noted haunt of pirates, and called for volunteers. He made up his complement to 155, and set sail. For three years no authentic news of him reached England or America, but ugly rumours came that he had turned pirate, and friendly States began to protest that their ships were being seized. In December, 1698, the Government issued a Proclamation offering to pardon all pirates who surrendered to four named

Commissioners and took service in the Navy, but Kidd was excepted by name. Orders were issued that he should be captured.

At last, in 1699, he arrived at Boston in a small sloop. He was seized and protested that he had come to clear his name. All the ships he had taken were, he said, lawful prize. But he had been betrayed. Early in the year he had reached the West Indies in a ship called *The Quedagh Merchant*. His fame had preceded him, and he was refused supplies, but eventually, through an Englishman named Button, he managed to revictual at a small Spanish island. He there made his plans. He buried the bulk of his hoard on Gardner's Island, where probably it still remains, as the Government failed to find it. He then bought from Button a small sloop, in which he and some of his crew embarked, taking some of the treasure with them. *The Quedagh Merchant* he left in Button's charge, but no sooner had he sailed than that worthy sold the vessel to the Spaniards and set off for Boston to give information. He arrived before Kidd, who thereby lost the advantage that he had planned. Lord Bellamont realised that he had an important prisoner, and sent to England for instructions, and when they arrived Kidd was sent home for trial.

The news of his capture had caused great excitement. It was known that he had been sent out by Somers and his friends, who were now the object of fierce attacks in Parliament, and it was now certain that he had turned pirate. What an opportunity if only he would implicate them in his misdeeds! The Junto was on the eve of its fall, but the trial must take place in England, since Lord Bellamont might, if Kidd were tried in America, burke all the evidence reflecting on the syndicate. The first move was a frontal attack. A motion was proposed in the Commons that the Commission granted to Kidd was "dishonourable to the King, against the law of nations, contrary to the laws and statutes of the realm, an invasion of property and destructive to commerce." This motion failed, but a more reasonable one was carried, namely, that Kidd should not be tried until the next session of Parliament, and that all the depositions and papers should be sent home. On his arrival on 8th April, 1700, no time was lost in bringing him before the Bar of the House of Commons. It was a sad disappointment. He was half-drunk and made a poor show. He would not admit that he was a pirate, and then and

throughout never said a word that would implicate his employers. One of the most eager of the Members to have him examined angrily exclaimed: "I thought the fellow had only been a knave, but unfortunately he happens to be a fool likewise!" Perhaps Kidd was not such a fool. There would only have been his bare word. They were powerful lords, even after their fall from power, and to seek to involve them necessarily deprived him of his only defence, as no doubt he clearly perceived.

In the meantime, the King's Proclamation had become known, and a number of the crew had gradually been collected. What they had not realised was that the surrender could only be made to four named persons, and then certain conditions had to be fulfilled. The poor men thought it meant that surrender to the authorities would ensure their pardon, and only too late realised that their confession stood and that the pardon was not to be had.

The Crown was now ready for trial, and Kidd and his nine associates were brought up at the Old Bailey on the 8th May, 1701. At that date criminal jurisdiction was exercised by the Court of Admiralty when the offence was alleged to be committed on the high seas. The trials were held at the Admiralty Sessions at the Old Bailey, and the main differences between them and the ordinary Sessions was that the Judge of the Court of Admiralty presided and charged the Grand Jury and sentenced those found guilty.

After Dr. Oxenden, the Admiralty Judge, had charged the Grand Jury, the latter found true bills against Kidd for murder and piracy, and against the others for piracy. Two of the nine were also indicted with Culliford, another notorious pirate, who was tried at the same Sessions for other piracies.

The trials began at once. On the Bench were Lord Chief Baron Ward, Mr. Justice Turton, Mr. Justice Powell, Mr. Baron Hatsell, and the Recorder (Sir Salathiel Lovell), all of whom sat with Dr. Oxenden.

Kidd refused to plead and asked for Counsel, who were then only allowed to argue points of law for the defence. When asked why, he explained that he wanted to put off the trial as long as possible in order to get his evidence. His papers had been seized, including the French passes, which showed that the captured vessels were lawful prize. A wrangle ensued, during which Kidd repeated that he "wasn't ready," and the Recorder

very unjudicially retorted, "Nor never will, if you can help it." But he still refused and the Court proceeded to take the pleas of the others. More difficulty. Churchill, the first of them, wanted to raise the plea that he came in under the King's Proclamation, but he was told that he must first plead. So he pleaded Not Guilty, and so did all the others, of whom Owens and Mullins also claimed to have come in under the Proclamation. Then again Kidd was called on. He again refused, and repeated his protest about his papers, but eventually being informed that, if he refused to plead, the penalty was condemnation without trial, he gave way and pleaded Not Guilty.

Then came the turn of prisoners' counsel. Dr. Oldish and Mr. Lemmon had been assigned to them. The first point was that a necessary witness named Davis was indicted with Culliford, and that the trial must be put off until Davis had been tried. He was in Newgate awaiting trial. The Court held that the fact that he was committed on another charge did not prevent him giving evidence, and sent for him. Then counsel pressed for an adjournment to obtain the French passes that, as Kidd alleged, Lord Bellamont had seized. Besides, they said, they had not had time to get ready. Though a fortnight's notice had been given, the £50 granted for expenses had been paid to a person who had gone away, and they had only got the money the night before. Dr. Oxenden queried this. He had ordered the money to be paid to Kidd, and the Registrar said that he had paid it to Kidd. At this stage the Solicitor-General said that none of the reasons for adjournment applied to the murder charge, and consequently no reason existed why this should not be gone into, and so this course was adopted.

The murder charge spoils the story. It was an incident of the whole voyage, but most of the facts of that voyage were quite irrelevant to this charge. For that reason, probably, the opening speeches were short, probably the shortest on record, for the opening of the indictment by Mr. Knapp and the speeches by the Solicitor-General and Mr. Conyers could not have taken five minutes in all.

The charge was that Kidd had in October, 1697, murdered his gunner, William Moore, by striking him on the head with a bucket. *The Adventure* was then cruising off the coast of Malabar. About a fortnight before they had fallen in with a Dutch vessel, *The Loyal Captain*, of which one Hoar was



master. There had been some talk of taking her, but she was allowed to part company, and apparently this had caused some discontent. The chief witness for the prosecution was Joseph Palmer, one of Kidd's men, who said that as Moore was grinding a chisel, Kidd came to him and questioned him about a safe plan which Moore had for taking the Dutch ship. Moore denied it, and in the altercation Kidd called him a "lousy dog." Moore replied: "If I am a lousy dog, you have made me so. You have brought me to ruin, and many more." Kidd took several turns up and down the deck, muttering, "Have I ruined you, you dog?" and then, seizing a bucket bound with iron hoops, he struck Moore on the right side of the head. Bradinham, the surgeon, was called, and proved that the gunner was a healthy man and died of the wound the next day. Kidd's defence was that there was a mutiny because he would not take the Dutchman, and in this mutiny, Moore was a ringleader. "So," said Kidd, "I took up a bucket, and just throwed it at him, and said, 'You are a rogue to make such a motion.'"

Unfortunately, the witnesses for Kidd did not agree, except that the altercation was days after the Dutchman had sailed her way. One witness agreed with Palmer that Kidd did not throw the bucket, but held it by the strap. There was no evidence of a mutiny on the day of the murder. The only difference was as to the language used. Apparently Kidd got enraged when called a "sawney." An attempt was made to prove that Moore was a sickly man, and that Bradinham had said that he had not died of the wound. Bradinham promptly denied this. Moore had never been under his care except for the wound. The Lord Chief Baron summed up. He put Kidd's version to the jury, and asked them to consider whether the words alleged were a provocation. He also put to them Palmer's version, and directed them that if those were the words used they were too slight to be a provocation. Kidd then asked to call witnesses to his past services. It was too late then, and, as he was reminded, they would not help him on a murder charge. The jury convicted him.

The trial has been criticised on the ground that the only witnesses were two of his own men, and that the summing-up was unfair. Neither criticism is well founded. There was never the slightest suggestion that either witness took any part in the altercation, and, indeed, Bradinham was not there when the wound was given. He was merely the surgeon who

proved the cause of death. The summing-up, if unfair, was unfair only to the prosecution. It is undoubted law that mere words are no provocation, and the defence had proved that any discontent about the Dutch vessel had occurred days before, and that at the worst the only provocation was that Moore was grossly impertinent.

The conviction of Kidd on a capital charge took all the interest out of the main trial. The first indictment for piracy charged Kidd, and the nine men, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens and Darby Mullins, with the piratical capture of *The Quedagh Merchant* on 30th January, 1697-8. In the course of this trial the story of Kidd's voyage was told in full.

After leaving New York in July, 1696, *The Adventure* reached Madagascar in July, 1697. The adventurer could have found ample employment at that nest of pirates, but instead he went off to the Red Sea and lay off a small island in the entrance called "Bab's Key," waiting for the Mocha fleet, consisting of Indian vessels trading between the Red Sea and India. He declared that he would ballast his ship with gold and silver. Three times he sent out boats to reconnoitre, and at last, on 14th August, 1697, the fleet came by. Kidd sailed into their midst and opened fire, but he was answered by a convoy, which he had not expected, and made a hurried flight.

Having thus miscarried in his first attempt, he cruised about off Arabia and India, capturing Arab and Indian vessels. The first ship taken hailed from Bombay. Her master was an Englishman, and there was a Portuguese on board. The rest were natives. The two Europeans were taken on board, and soon after the ship arrived at a factory, where Kidd was asked to surrender them. They were hidden in the hold, and he denied that he had any such persons on board. At one place the cooper went ashore and was murdered by the natives. In revenge, Kidd landed and plundered and burned some houses, and tied a native to a tree and shot him. The plundering of these ships led to the sending of two Portuguese men-of-war against him. One fell in with him and maintained a running fight for several hours, but he got away with a loss of only ten wounded. In October, Moore was murdered. In November they took a ship from Surat. Kidd hoisted French colours and went in chase of her, but she also hoisted French

colours, and apparently had a French pass. She was taken to Madagascar. In December they took a ketch, and sent her adrift after plundering her. In January, 1697-8, they fell in with *The Quedagh Merchant*. The pirate hoisted French colours and overtook her. She was owned by some Armenians, who were on board. After that they boarded several vessels, and plundered them. Finally they decided to make for Madagascar, taking a native ship on the way. They arrived in May, 1698, and proceeded to a complete share out. The money and goods were divided separately, each into 160 shares. Kidd took 40 of each, and each seaman had one complete share of each, and each landsman one half-share; but for equality of division some men had half a share in the money and a whole share in the goods.

At Madagascar they fell in with Captain Culliford on the pirate ship *Resolution*, which, before her capture, had been a merchantman named *The Mocha Frigate*. Culliford was a notorious freebooter, and Kidd's advent filled him and his band with alarm. They had heard of his commission, but not of his dereliction of duty. Their fears, however, were soon allayed, and the two bands fraternised. Their new friend swore that his soul would fry in hell before he harmed them, and he gave practical proof of his pacific intentions by supplying Culliford with two guns and ammunition and stores.

By this time *The Adventure* was foul and leaky, so she was destroyed. Kidd transferred to *The Quedagh Merchant*, but with the share-out the cruise had come to an end. Several, including Bradinham, left him, and some of these joined Culliford. The rest sailed with him for the West Indies, where many rich prizes could be picked up. At this point the story ended, as the Crown had no evidence to show what had become of *The Quedagh Merchant* or how Kidd had managed to reach Boston in the sloop.

Palmer and Bradinham were the only witnesses for the prosecution. It is not easy to say why, since it came out that one of the Armenian owners of *The Quedagh Merchant* was actually in court.

During the murder trial, Kidd's defence suggested that in these piracies he was the unwilling follower of his own men, but he did not take that line on the actual charge of piracy. Possibly the presence of the owner warned him that there was evidence available as to what he had done at the capture. His

defence now was that the ship had a French pass and was, therefore, lawful prize. Davis was called, and swore that, at Amboyna, Kidd had shown some papers in his presence to another captain, who said they were French passes, and offered to turn them into Latin. Davis did not explain what he or Kidd were doing at Amboyna, and certainly gave no evidence that the papers related to this vessel or that he had read them himself. Bradinham was interrogated, but all he knew was that Kidd had always said that the ships had French passes, but he had never seen them himself.

At this stage Churchill made his defence. It was limited to a claim to pardon under the Proclamation. In fact, none of the nine men ever made the slightest attempt to deny piracy. He called Jeremiah Bass, the former Governor of New Jersey, who said that Churchill and Howe had surrendered to him, but he had not accepted the surrender, and had left them in custody when he came home. Lamley said he was Owens' servant. Jenkins that he was Bullen's servant. Loff declared that he joined at New York, and had obeyed Kidd's orders. He had gone to serve the King. He was asked how he came to share the proceeds, and answered that he only took what the others chose to give him. Parrot said that he was at Madagascar when Kidd first arrived. Hearing that Kidd had the King's commission he joined him. He thought he was safe where the King's commission was, and had obeyed Kidd in all things. Barlicorn called witnesses as to his character, and said that he was Kidd's servant. Owens relied on the Proclamation. He had a certificate from the Justice of the Peace that he had surrendered and had joined the Navy. He was serving when arrested. Mullins also relied on the Proclamation. He and Churchill had joined Culliford at Madagascar, and had afterwards reached America. As Bradinham was asked about Mullins' health on the voyage it seems probable that he joined Culliford. He had quitted Kidd at Madagascar, and was on the same ship with Churchill and Mullins when they surrendered. He confirmed Mullins' statement that he was ill of a "bloody flux" on that voyage.

Kidd called witnesses to impeach Bradinham's veracity and also as to his meritorious services in the former wars. He again called for the French passes, which he alleged Lord Bellamont had taken from him. They were never produced, nor did the prosecution ever attempt to prove that no such

passes were found among Kidd's papers. It is indeed highly probable that some at least of the captured vessels had provided themselves with French passes. It was a time of war, for the news of the peace had not reached Indian waters, the seas swarmed with French privateers, and many mariners in such times took the precaution to procure passes from both sides. On the other hand, none of the nine men charged with Kidd ever said that the documents existed. Palmer said nothing about them, and Bradinham had only heard Kidd say that they existed. The nearest to proof was Davis' statement that Kidd had some papers which someone else examined and said were French passes. Perhaps the prosecution desired not to confuse the issue by a false print. Although Kidd, as a privateer, could lawfully seize such ships, yet it was his duty in such a case to bring them in for adjudication by a Court of Prize, and, with the captured ship, all her papers, not merely the pass. He had never attempted to do this, but by dividing the spoils at Madagascar had clearly shown that he had abandoned his letters of marque and was a mere filibuster. Kidd knew the procedure required. He had been a privateer before and had actually brought in for adjudication the lawful prize made by *The Adventure* on her voyage to New York. The Lord Chief Baron summed up. He ruled that the defence that the ships were lawful prize could only be sustained by evidence that the ships were French or were sailing under French passes. He was strikingly lenient to the three servants, for he contented himself by directing the jury to consider whether they went voluntarily, and, if not, then to acquit them. The jury took the hint and promptly acquitted Lamley, Jenkins and Barlicorn but convicted Kidd and the others.

The prosecution then went on with a third indictment for the piratical seizure of an unknown native-owned ship on 16th September, 1697. The defences were the same. Mr. Justice Turton summed up, and the jury convicted the same seven.

Then came three more indictments, and the same verdicts followed.

After this Churchill and Mullins had still to meet two other charges. Captain Culliford and some of his crew were arraigned on a number of indictments charging them with piracy in seizing several ships, and they pleaded Guilty. On two of these indictments Churchill and Mullins were also

accused. They pleaded Not Guilty to raise the point of their surrender under the Proclamation, but eventually confessed guilt. The sentence for piracy is death by hanging, and this was pronounced upon all those who were convicted by Dr. Oxenden. Kidd had the last word. "It is a very hard sentence," he complained. "I am the innocentest person of them all. Only I have been sworn against by perjured persons."

On the 23rd May, 1701, he was taken to Execution Dock, and there hanged in the sight of all vessels using the Port of London.

There can be no doubt of his guilt. The facts alleged were hardly disputed. It is idle to say that the evidence was only that of two of the gang. In such cases the evidence of accomplices must be taken. Nowadays the court requires corroboration, but the necessary corroboration was certainly available. Besides, Kidd did not deny the facts. He merely said that the ships were lawfully captured, and the other men either made no defence on the merits, or claimed that they had obeyed his orders. What his motive was it is impossible to say, but it is not improbable that the heaven-sent opportunity of a good ship, well armed, and manned with an adventurous and manageable crew, was a temptation too strong for him; opportunity makes the thief. He thoroughly earned the hangman's rope.



# *The Wardens of the Fleet*





## THE WARDENS OF THE FLEET

THE term "office of profit" has been relegated to the vocabulary of lawyers, and with them it is rarely used except when arguing the provisions of the taxing Statutes which have preserved those magic words. There was, however, a time when a salaried civil servant was a very rare creature. Most Government employees held "offices of profit," and by reason of that position enjoyed the right or were able to assert with effect a claim to receive various customary payments and dues which would recompense them for their labours. Pepys has preserved for us the practice and principles of one of the most upright officials of his time. He would nowadays be ignominiously dismissed for gross corruption. Opinion conceded that there was a limit at which perquisites became bribes, but the line was hard to draw. Bacon had suffered because his precepts excluded the legality of his practices. Macclesfield at the time of this trial was on the brink of impeachment by reason of his failure to draw the line.

It was, to our modern notions, a curious corollary to the existence of an "office of profit" that it should be regarded as a kind of property vested in the holder. Though he held by grant, sometimes revocable and sometimes not, there was a custom which enabled a holder to surrender his grant in favour of a nominee, who paid a consideration to the former holder, and the nominee obtained a fresh grant. This was so in the case of the Masters in Chancery who had the care of suitors' money (and, according to the principles of the day, could use it for their own benefit provided it was ready when needed). The South Sea Bubble had provided precedents where the money was not ready, but was hopelessly lost. A master would have borrowed money to pay his predecessor and then repaid the lender out of suitors' money, trusting to be in office long enough to replace it.

This system was in 1728 in full force in the case of prison wardens. They were almost all men who had paid large

sums for their positions, and looked to the prisoners for their income and the means to replace the capital they had sunk. They need not necessarily act in person. They need have no education, standing, or capacity. In view of their position and the source of their earnings it is not surprising that the history of prison administration in England is unpleasant reading.

At this period not only was the community of the county, hundred, parish, or other local unit responsible for the safe custody of prisoners awaiting trial or sentenced to imprisonment, but creditors, too, were entitled to seize their defaulting debtors, either on mesne process (that is, after the issue of a writ, but before judgment) or under a judgment. Debtors arrested on mesne process could obtain their release by giving security, but once a judgment was obtained they could only escape by payment. It was not until long after a trader could be made bankrupt and obtain discharge from his debts that the unfortunate non-trader could obtain similar relief. The universal speculation and widespread ruin caused by the South Sea Bubble led to an Insolvent Debtors Act, 1725, giving non-traders relief. Once a man was arrested for debt, other creditors could take steps to protect their interests by lodging "detainers," so that the debtor could not go free until all had been satisfied, the attorney's costs paid, and the fees of the prison-keeper satisfied.

The root idea was that the man or woman should be held. There was little or no idea that there was any duty towards the unfortunate.

There seems to have been no proper supervision. Although the Judges and Justices had the oversight of prisons, effective reform would cost money, and involved ideas of policy which were foreign to all but a few speculative thinkers. Inside a debtors' prison there was a mob of people, swindlers and swindled, without proper separation or segregation of the sexes, often, in the country, mingled with malefactors, without any regard to order or morality. Money was the sole means of obtaining seclusion or decency. By money, if in the first instance any escaped the sponging houses, the debtor could obtain separate accommodation furnished to his taste, entertain himself and his friends with the luxuries of the season, and could even, on giving security that he would not escape, live out of prison in certain defined areas known as the Liberty of

the Rules. Every day and in every way the keeper and his satellites were on the look-out for gain, and woe betide the unfortunate debtor who was without means to satisfy their greed, the more so if it were known that he had means and contumaciously refused to submit to the rapacity of his keepers. He could look forward to insult and injury, and if he had sufficient spirit to appeal to the Court, might even find himself a condemned felon upon a false accusation, supported by the evidence of professional perjurers.

Prisoners had only one redress—death. The lack of elementary decency led to a strange disease, jail fever. Often at Assizes the prisoners diffused a strange and dreadful odour which brought death to the Judge on the Bench and to the Counsel and spectators at the Bar. In 1730, at the Somerset Assizes, jail fever destroyed the Lord Chief Baron and his servants, the High Sheriff and his attendants and many learned Serjeants and Counsel with their clerks. So common was this disease, that it was regarded as unavoidable, and to account for a prisoner who had been done to death was easy, if it were even whispered that he had caught the fever. Death by a filthy, loathsome disease was often the penalty inflicted upon an innocent person who was suspected of crime and upon an unfortunate who was alleged to have failed in payment of debt.

In 1728 public opinion was greatly stirred by rumours of strange happenings in the Fleet and the Marshalsea Prisons. The Act of 1725 had caused the release of many who otherwise would have suffered life imprisonment for debt, and their tales of prison caused a widespread belief that wholesale breaches of the law formed part of the ordinary routine of prison administration. One of the prisoners who had died was Robert Castell, a merchant whose tastes lay in the study of antiquity and architecture. He was a quiet, peaceable man, a great friend of General Oglethorpe, then an M.P. Oglethorpe brought the scandal to the notice of the House. A Select Committee was chosen to make an inquiry. The reports led to the immediate arrest of the Wardens of the Fleet and of the Marshalsea, charged with murder and robbery with violence.

The Fleet was an ancient prison to which prisoners had been committed by the Star Chamber. When that Court was abolished in 1641 it became a prison in which the Courts of

Chancery, Exchequer, and Common Pleas confined persons in debt or found guilty of contempt. By an Act of Charles II, prisons had been put under the supervision of the Judges and the local Justices of the Peace, and the Warden was subject to them. A table of fees had been framed in Queen Elizabeth's days, and this table was confirmed under Charles II. That monarch had granted the Wardenship as a freehold to Sir Jeremy Whichcoat, together with the lands going with that office. Sir Jeremy in return bound himself to rebuild the prison. From him others acquired the office, but their conduct was so scandalous that the grant was revoked. A fresh grant was obtained by John Huggins for his own and his son's life. He gave £5000 to Lord Clarendon for the right, and held the office for many years. He seems to have been a man held in esteem by his friends and neighbours, who cared or knew little of the methods by which he obtained his ample means. He went but seldom to the Fleet, leaving the charge to subordinates to whom he sold their places at exorbitant rates. He had no real authority to appoint tipstiffs, but assumed the right. There were five of these officers, and in November, 1724, he appointed Richard Corbett as one of them. Huggins' deputy was one Thomas Bambridge. In 1727 Huggins found himself stricken in years, with a son who absolutely declined to take over his office. Accordingly he agreed with Bambridge and a man named Dougal Cuthbert to surrender his patent on payment of £5000, and a new grant was accordingly made.

Bambridge had reduced the task of extracting fees to a fine art. He did not keep proper books or note the reception and discharge of prisoners, so that there was little evidence to show who was or who was not in his custody. He made a private door in the wall of a yard where dogs were kept, and out of the door he was accustomed to grant exit to prisoners who paid him well for the privilege. Of course they did not complain; but the surprise caused at Islington may easily be imagined when men saw at large a smuggler named Boyce who was known to be in the Fleet for Exchequer penalties amounting to £30,000.

A debtor could if he so desired go in the first instance to one of the Fleet inns. These were called "sponging houses," but by law no one could be forced to go there. The intention was that a debtor might lodge there while seeking to discharge

his debt. They were let by the Warden to creatures of his, who, in return for exorbitant rents, were allowed full licence to plunder. Bambridge forced debtors with means to go there whether they liked it or not, and even went so far as to refuse to let them in the prison. The charges were enormous. Inside the prison there were two sides or departments. The Master's Side, where debtors with means could hire accommodation, and the Common or Poor Side, where in theory the debtors obtained adequate shelter for nominal fees. All the prisoners were of course subject to the necessity of buying food and drink in the prison, and the Warden drew profit from this source, and also from those who paid him not to see practices forbidden in prison. A debtor who gave security might leave the prison for the Rules, but this would to a great extent cause him to be less profitable to the Warden, who accordingly saw to it that departure from the Rules, unless obtained by substantial payment, was ruthlessly obstructed by requiring exorbitant security.

A graver abuse of authority was actual violence. Men who complained of exactions were assaulted, ironed and placed in the Strong Room. Each side had a room of this kind. On the Master's Side it was a building 8 ft. by 11 ft. and 9 ft. high. It was over the common sewer and next to the place where the prison odure was deposited. It was damp, foul and noisome. The ostensible purpose of the place was the confinement of refractory prisoners. There they were flung, fettered, without fire or bedding, lying on the damp ground and surrounded by walls streaming with moisture. Its other use was as a mortuary for dead prisoners awaiting inquest. The only ventilation was by a hole over the door and one by the side big enough to pass a quart pot. These dungeons had been built contrary to the orders of Lord King, when Chief Justice of the Common Pleas, who ordered that there should be no prison within a prison. One man placed there was somewhat unstable in his mind. He had only a feather mattress and crept inside for warmth. One day the door was left open and he rushed out into the hall, almost naked, covered with filth and feathers, more like some strange fowl than a human being. It is said, however, that there was a worse place than the Strong Room, a hole called Julius Cæsar's Ward.

It may be added that there was a scale of fees, a right to

claim redress from the Judges, and in any case where men were confined without being separated, a right to organise opposition. The law required that the scale should be exhibited. The Warden had it hidden away, so that only guesses could be made as to the right fees. Objectors went to the Judges. Before anything could be done they found themselves at the Old Bailey charged with assault on clear evidence, all suborned. Organisation did exist. The prisoners elected a Court of Inspectors who were allowed to exercise jurisdiction within the prison. It was alleged during the trial that they were all-powerful and that the Warden did not dare go inside. He was caught out in this lie because it was admitted that he had been to the Chapel, which could only be entered by going inside the prison. Probably he could not venture alone within the walls for fear that his victims would avenge their wrongs.

One case illustrates many of the malpractices. John Houlder, a Spanish merchant, had a room which he furnished himself. Bambridge turned him out into the Common Side. Finding that the man was dying he had him carried back to the room and he died there. Trustees had been appointed by will, and they came to take an inventory. They found that Bambridge had broken into the room and seized the effects. He shut one executor out of the prison and locked the other in the Strong Room, in order to prevent them carrying out their duties. The Commons directed the prosecution of Huggins, Bambridge and several others. They also investigated cases at the Marshalsea, and ordered the prosecution of William Acton, the Deputy-Warden there.

The prosecutions were set on foot, but delays occurred. Application after application was made for bail; in the meantime public indignation subsided, and the prisoners' friends worked hard in their interests. It is not always to the interest of a prisoner that he should have a speedy trial. At last, on 21st May, 1729, Huggins came up at the Old Bailey before Mr. Justice Page, Mr. Baron Carter and Serjeant Raby, the Deputy-Recorder, to stand his trial for the murder of Edward Arne on 7th December, 1725.

Arne was a quiet, inoffensive man who had been arrested for debt on mesne process on 12th May, 1725. Barnes, a prisoner promoted to be watchman, had seized him and placed him in the Strong Room. He was the man who had crept into a

feather bed. The evidence to connect Huggins with the offence was that he had twice been up from the country and had seen Arne in the Strong Room and left him there after being appealed to for mercy. Indeed, it was said that when a plea was made for Arne to Huggins, Barnes had said: "Let him die and be damned."

Yorke, the Attorney-General, Talbot, the Solicitor-General, Serjeant Cheshire and Mr. Holland, M.P. for Chippenham, were for the Crown. The prisoner was represented by a strong team, headed by Sir John Darnell, Judge of the Marshalsea Court, but their function was limited to arguing points of law for the prisoner.

The defence was that if anybody was guilty it was Gibbon, the deputy, who was dead. He had paid £400 a year to Huggins for his office. Bygrave, the clerk, had paid a lump sum of £750 10s. for his place. It was suggested, and with apparent reason, that Arne was not right in his head. Witness after witness was called to prove that he was a quiet, healthy man when put in the Strong Room, and a dying wreck when he came out just before his death. Evidence was given in great detail showing that Huggins saw him there; that he must have known that the place was a death-trap, but left him there to die. On the other hand, much testimony was given to prove that Huggins was never there at that period; that the Court of Inspectors had sole control of the prison, because Gibbon did not dare to enter, and that Huggins, as he declared, never even knew of Arne's existence.

The summing-up was by Mr. Justice Page, who confessed, and with much justice, that there never was a case with so much conflict of evidence. He directed the jury that a prison for debt must be kept in a becoming way, and that if Arne's death was caused by his confinement in an improper place, it was murder. To convict Huggins they must, however, find that he was privy and consenting to the confinement. The jury retired and came back. They had agreed on the facts but desired to state them in their verdict, so that the Court could say whether Huggins was guilty or not. This was what is known as a special verdict. In effect they found that Huggins knew that the Strong Room was unhealthy, and that Arne had died through being confined there, but that he did not know from the first that Arne was put there, though he saw him there at least fifteen days before his death.



The effect of this verdict was twice argued ; once in the Court of King's Bench, and once before all the Judges and Serjeants Inn, sitting as a tribunal, now replaced by the Court of Criminal Appeal. Eventually it was held that in the absence of an express finding that Huggins knew the room to be dangerous to life (which presumably was what the jury meant), the prisoner must be acquitted, and he was discharged. The case is reported in 2 Strange 883 ; and 2 Lord Raymond 1574.

Next came Thomas Bambridge who, on the 20th May, 1729, pleaded Not Guilty and came up for trial on the 22nd of that month. The charge against him was that of murdering Robert Castell, Oglethorpe's friend, on 12th December, 1728. The trial was a fiasco. The witnesses for the prosecution merely proved that Castell was mortally afraid of smallpox, which had broken out at his lodgings. He asked to leave the Rules and go into the prison, where he caught smallpox and died. An acquittal was inevitable, and the prisoner was found Not Guilty. From the subsequent proceedings, it is beyond doubt that the witnesses had been suborned and were deliberately lying. At that date an acquittal was not decisive. Certain of the dead man's relatives were entitled to have a second trial, by proceedings known as " Appeal," and Castell's widow appealed Bambridge for the murder. This was tried on 26th January, 1730, before Lord Chief Justice Raymond at the Guildhall. The case for the prosecution was that Castell, who was detained for debts amounting to less than £400, was not allowed the Liberty of the Rules until he had found a security on five different occasions for sums totalling £5,200. At one stage in his detention he received £125, and Bambridge, hearing of this, had him taken to his sponging house which was rented from him by Corbett, who was also included in the appeal. There was a case of smallpox at Corbett's, and Castell, who feared the disease, repeatedly asked to be allowed to go to his lodgings in the Rules. It was quite illegal to send a debtor to a sponging house without his consent, but in spite of that and of his statement that he had not had smallpox he was forced into the house, where he caught the disease and died. There were at least two empty rooms in the prison.

The defence was a complete denial. Bambridge was actuated by the most benevolent motives, and let Castell go

to the sponging house to suit himself. White, the smallpox patient, was well, so the witnesses averred, at least a week before Castell went there.

Lord Chief Justice Raymond directed the jury that a man lawfully taken must be lawfully confined. There was no evidence that Corbett knew of the smallpox (in his own house), and he must be acquitted. As for Bambridge, if he knew that Castell had not yet had smallpox and nevertheless obliged him to go to a house where it was, whereby he caught the disease and died, then they must convict. The jury acquitted. They, of course, had seen and heard the witnesses, but it is safe to say that Castell's movements are incomprehensible unless he went against his will. That he, being nervous of smallpox, should leave his lodgings and go to a place where he would be overcharged for everything, and where smallpox had just occurred, in order to avoid the peril he was running into is beyond belief. Men do strange things, but Castell was a merchant of experience, and was expecting his release. He was a truthful man, and died denouncing Bambridge as his murderer.

This ended the proceedings regarding the Fleet. Bambridge had in the meantime survived a charge of stealing. This trial was at the Old Bailey on 5th and 6th December, 1729. He was accused of stealing the goods of Elizabeth Berkeley on 3rd October, 1727. She was a prisoner who lived in a room on the Master's Side. Bambridge turned her over to the Common Side, and broke open her boxes and took her jewellery and property. Afterwards he made an inventory, alleging that she owed him rent. The judges on this occasion were Eyre, the Lord Chief Baron, Mr. Justice Reynolds, Mr. Baron Carter, and Serjeant Raby. After the witnesses on both sides had given wholly incompatible evidence, Eyre, L.C.B., summed up. He told the jury the whole question was whether there was a real or a pretended distress. It was no defence to the charge if Bambridge had used a legal process with felonious intent. The jury acquitted.

There was a curious sequel. Rumours went round that Eyre had visited Bambridge while in prison and had sent him a hundred guineas to help his defence. The House of Commons investigated the matter, and decided that it was a conspiracy to defame Eyre, who had done nothing of the kind.

The four charges of murder against Thomas Acton concern the Marshalsea. The prison was used by the Court of King's Bench and the Court of Admiralty. Sir John Darnell had supervisory jurisdiction over the prison as Judge of the Marshalsea Court. He could not therefore appear as counsel for Acton, as he had done for Huggins, but he came as a witness to character, which in the circumstances reflects greatly upon his own credit. Acton was head turnkey and deputy-warden. Before taking up this responsible work he had been a journeyman butcher.

The trials were held at Surrey Assizes in August, 1729, where Mr. Baron Carter sat at Kingston. The first case related to the murder of Thomas Bliss, who died on 21st October, 1727. This man was confined in the Strong Room, a kind of lean-to near the sewer, in which pirates were confined while awaiting trial. He was put there in irons, and without bed or straw. It was damp, dark, and unventilated. Before then he had been beaten so cruelly as to cut his clothes off. While so confined, Acton one day had company and sent for Bliss. To make sport he fitted on the prisoner various instruments of torture he had found in the prison, an iron skull cap, an iron collar and thumbscrews. The man was healthy when first confined, and weak and ailing when released. Indeed, one woman said that his mouth was so sore while in the Strong Room that he asked her to chew his meat for him, as he could not. He had been discharged from prison on 25th March, 1727, and evidence was given of his attempts to work and of his collapse. The weak point of the case was that the man lived for seven months after his discharge. The defence was that the man was hurt in trying to escape, having fallen twenty-four feet in the attempt. The attempt to escape, the prosecution alleged, led to his beating and confinement. He had, according to the defence, been sent to the sick ward and only confined to prevent a further escape. After release he spent several days drinking and thereby caught cold. Many witnesses were called to substantiate the defence and an imposing array of witnesses to character came, headed by Sir John Darnell. One of these, a J.P. for Surrey, indeed said that he thought Acton was unfit for his position, because he was too compassionate!

Mr. Baron Carter summed up by going through the evidence. He directed the jury that if they believed the

evidence for the Crown they should convict. They acquitted.

On 2nd August, Acton came up on the charge of murdering John Biomfield. The dead man had been a captain in the Army. He was received in prison for debt on 1st March, 1725. He had at first been on the Master's Side, but in May had been taken to the Common Side, so he was apparently without means. He incurred Acton's displeasure and was beaten, placed in irons, and put in a hole under the stairs. This was a place too small for him to stand upright or to repose at full length. One witness said that the place was about as big as a large coffin. The floor was bare earth and too damp to lie on. After several days in this place he fell ill and died early in June. Acton's defence was that the prisoner was put in irons because he stabbed another man named Perkins. He was well when released, but afterwards caught jaundice, of which he died. The jury again acquitted.

On the same day came the third trial, for the murder of Robert Newton. This man was described as a fat, jolly man. He shared a room with a man named Hartness. The prosecution called witnesses to prove that one of them attempted to escape. Newton was seized, fettered and placed in the Strong Room. He fell ill in consequence, and was removed to the sick ward, where he died. Sir John Darnell had been applied to in this case, and had ordered Newton's release, but Acton paid no heed. In this case one of the witnesses said that the Strong Room was verminous and infested with rats. He had seen a man's face which had been eaten by rats while he was lying there for a few hours awaiting burial. In none of these cases had an inquest been held, although the death of every prisoner should have been the subject of a coroner's inquest. The defence merely said that inquests were not customary in the Marshalsea. Acton's defence was that both men tried to escape, and were put in irons for some days. They merely slept in the Strong Room and were about during the daytime. Newton fell ill after his release. A third time the jury found Acton Not Guilty.

The fourth and last trial followed immediately. This concerned an unfortunate man named James Thompson, who died in 1726. He suffered from diabetes and his complaint caused him to stink. The Ward Company, as the prisoners' committee was called at the Marshalsea, had complained of

him in consequence. Acton had taken him to the Strong Room and he lay there for ten days, during which time his left side mortified. One witness said that after his death a clenched fist could be put in the hole in his side. He was taken out but put back again and died there. It was stated that when representations were made to Acton that the man would die, he exclaimed: "Damn him, let him lie there and perish." Again there was no inquest. The defence was that Thompson was living in a ward called the Pump Room. The other prisoners there complained of his offensive smell, fined him, taking away his coat as he had no money, and ejected him from their room. He applied to Acton for somewhere where he might be in peace. He declined to go to the Sick Ward lest he be fined and have more clothing taken, and elected to go to the Strong Room, where he had a bed and was alone. The jury acquitted.

Then followed a curious scene. The prisoner's counsel applied that he be discharged, but the Judge peremptorily refused to order it. Such a refusal indicated then that the Judge disagreed with the verdict. A prisoner at that date was not entitled to discharge as of right until it was clear that no "appeal of murder" would be brought. Mr. Paxton was appealed to, but he walked out of Court. General Oglethorpe was then asked to intercede. He expressed resentment at being approached. He was, he said, a member of the Commons Committee that had ordered the prosecution, and therefore deemed it his duty to be present, but he was not responsible for the prosecution, and could not imagine why any application should be made to him. He, however, gave his views. He desired the prisoner to be released, not because he thought him innocent, but because every Englishman who had been acquitted had a right to be discharged. "Nor can any subornation of perjury or management of the jury prevent it." These last words give a clear indication of his opinion as to the means whereby the prisoner had escaped sentence of death. The latter was, in fact, afterwards discharged. Another attempt was made to bring him to book, but failed. A Justice of the Peace was found willing to commit him on a fifth charge of murder in the prison. He applied for bail, but was remanded to the next assizes, where the Grand Jury threw out the bill. Sir John Strange, who appeared for the defence in all these cases, in relating this last failure comments

that Acton was acquitted to the satisfaction of almost everyone. His sympathy went out to the harpies who had battered on the misfortunes of those whom the law had entrusted in their unworthy hands ; not a word for the dead, who had died and were forgotten.

The cases caused a great sensation. A Committee of the House of Commons had, after careful investigation, reported that grave crimes had been committed under the cloak of the law, and had ordered the offenders to be prosecuted. All of them were acquitted. This series of trials shows that the scenes of the *Beggar's Opera* were not the invention of the dramatist, but were taken from life and appreciated as such by the audiences, more easily moved by the humour of the situation than by the misery and degradation of those who were condemned to a living death in prisons that were a disgrace to the country and kept by men unworthy of their trust.

Nevertheless the revelations effected some good. Parliament by Statute removed some of the grosser evils thus disclosed. Others still remained, and public opinion was not sufficiently enlightened to insist upon root and branch reform until the work of John Howard and his followers in later years had borne fruit.

Moreover, from the miserable death of these guiltless prisoners has sprung the great and prosperous State of Georgia. Oglethorpe was not a man to be content with an investigation of prison life and an attempt to avenge his friend. He meditated upon a remedy, and after mature thought decided that men who had no chance in England might in another land, and with renewed hopes, regain prosperity. In June, 1732, he obtained a charter establishing the Colony of Georgia, and thereafter devoted his life to promoting its prosperity. Georgia reveres Oglethorpe as its founder ; but it may be doubted whether if the gentle Castell had not died at the hands of the brute Bamfield, that State would have come to such happy birth.

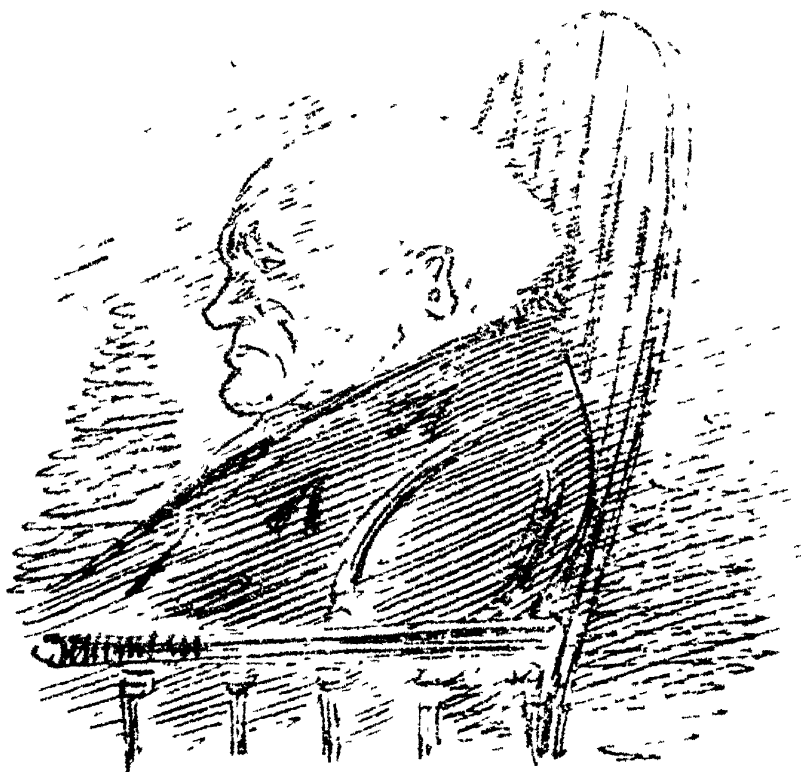




MARIE ANTOINETTE

*See page 299*





*Charles Peace, as  
he appeared sitting in  
the dock when I defended  
him for murder in 1877.  
F.L.*

CHARLES PEACE

from a sketch made in Court by his Counsel, the late Sir Frank Lockwood.

(Reproduced from a picture supplied by Rev. A. Kynaston Gaskell.)

*The Trial of Eugene Aram*



## THE TRIAL OF EUGENE ARAM

THE real story of the murder for which Aram was hanged, about fifteen years after the crime, will never be known. There are three versions: that of Aram himself when examined; next the greatly different one which he told in the few days of waiting after his condemnation; and, thirdly, that of Houseman, who turned King's evidence. Houseman may have been right as to the main fact, but he had much to conceal. Aram's first account is almost certainly not true; and of the second the probability is that only the fact of the murder may be accepted. There seems to have been too many people interested in concealing their share in the crime, but enough is known to conjecture that, as in so many other crimes, committed by several in concert, there was a criminal conspiracy, the members of which were not loyal to one another. Perhaps, indeed, the murder was only a casual consequence of thieves falling out.

There are two other circumstances besides the mystery of the murder which have combined to make the trial of Eugene Aram so noteworthy. One was that the interval between the crime and the punishment was so long. Justice is leaden-footed, but rarely, in this world at least, do the mills of God grind so slowly as in this case. It was not until Daniel Clark had been in his grave for over thirteen years that steps were taken to charge his murderers, and then a year elapsed before the one who was eventually condemned paid the forfeit. The other circumstance was the intellectual superiority of Eugene Aram. True it is that he was a struggling schoolmaster in a remote town and that the world did not know of his marked ability as a scholar, but that such a man, given to hard study in his scanty leisure, should join in a vulgar fraud or a sudden crime in the company of men of no great education is remarkable. Intellect is no guarantee against crime; but of all men the earnest solitary student seems most exempt from temptations which to others appeal so strongly. One may add to these reasons, also, the singular chance which added

a new instance to the old saw that "murder will out." It is not surprising, therefore, that Thomas Hood found in the story the inspiration for a moving poem, or that Bulwer Lytton built upon it a narrative embellished by his fecund imagination. Few years have elapsed since Aram suffered on the gallows without some account of his crime being published for the amusement or instruction of the public.

Let us first examine the kind of man he was. He was born at Ramsgill in the West Riding. The date of his birth is nearly indicated by the fact that he was baptised on 2nd October, 1704. His father was a gardener, respected for his integrity and natural ability. Eugene was educated at small country schools, where he profited by the meagre instruction then afforded, and learned, what is most important, how to learn for himself. From his earliest days he was a student, for ever teaching himself some fresh branch of knowledge, with a strong bias for languages and what is now termed philology. After a short experience of office life he commenced schoolmaster, as the saying goes, at his native village, where he taught with success but with rigid severity. A number of the boys who at various times and places came under his instruction afterwards made their way in the world.

On 4th May, 1731, he married Anne Spence. Little is known about her. She seems to have been of an inferior station in life, and to have gained small affection or esteem from him. While they lived together she bore him many children, but her society was not otherwise congenial. When he deserted her, she seems to have accepted her lot with resignation and made no attempt to recall him to his duty. Apparently she knew of the murder, but until the discovery she kept her peace.

What was the attraction or motive which led to this ill-assorted and ill-starred union it is idle to speculate. But the support of a wife and a large and increasing family must have been a severe tax upon Aram's limited resources. It was in 1734 that he went to Knaresborough, attracted by the post of steward to a small estate, which he combined with that of a private schoolmaster. He had by this time acquired a knowledge of Latin and Greek, and there began to tackle Hebrew and subsequently the Celtic languages. Study and his garden were his only relaxations; but how he could find the opportunity for pursuing knowledge in his small house with his

scanty means and leisure it is difficult to imagine, the more so as his neighbours were not such as to afford him much chance of intellectual companionship. It was in these circumstances and amid these surroundings that he perceived that Latin and Greek were cousin languages, and not daughter and mother as scholars then believed ; and so he claimed that the Celtic languages belonged to the European family, a circumstance which remained unperceived by other scholars for many years. The notes on the subject which he prepared proved that with better opportunities he would have become a scholar of world-wide reputation. Such was this solitary severe student, hampered by poverty, an uncongenial wife, and the routine of a small school.

Near the schoolhouse lived Robert Houseman, a sturdy broad-shouldered man, who followed the calling of a linen weaver. In the same town also lived Henry Terry, a publican. Houseman, Terry and Aram, were destined to be charged with the same murder, but their fates were widely differing.

The victim was Daniel Clark, who, though only twenty-three, had a thriving business as a shoemaker in which he had succeeded his father. He was pale, and pock-marked and stammered, but these defects had not prevented him from attaining the hand of a young lady of means, large for their station of life. In February, 1745, he was anxiously awaiting the birth of a child.

He had been engaged in some curious transactions which must have caused comment in so small a town. Though his wife had brought him several hundred pounds, he had been buying goods on credit, and the goods were of such a kind as to be easily portable. He still owed for the goods when at nine o'clock on the night of 7th February, 1745, he left home for the last time. He said he was going to visit his wife, who was then staying with relatives at a neighbouring village. Whether that was an excuse or not is uncertain, but he could hardly have meditated departure since he made an appointment for the next morning. The fact that he did not keep this appointment led to inquiries which revealed the disquieting circumstance that he had not seen his wife at all. Nor was he alone missing. His money and goods had gone. The only curious feature was that he had not taken his horse.

Now during the night he had been seen by a number of people. At one time he had been with Houseman ; at others

with Houseman and Aram. At two or three o'clock in the morning he had called up a man who noticed that the other two were with him. Next morning the man missed a pick, which was recovered two or three days later from Aram's house.

After a day or two Clark's absence alarmed his creditors. They drew the most uncharitable inference and advertised for him. Reward £15 "and no questions asked." His association with Aram and Houseman led people to think that all three were in the fraud, and these two men had to submit to a search. Both had many of the things missing from Clark's house. The plate had disappeared. Terry was not suspected, but, with the recovery of part of the goods, the creditors were satisfied and the population settled down to its drab existence. If Clark had bolted, the absence of the property was explained. If the other two had aided him, a division of the spoil would account for what they had. Therefore, as it was generally believed that Clark had defrauded his creditors, his absence only troubled his family and those creditors. One cannot dismiss the belief in such a fraud as mere wicked inference from his disappearance. The circumstances are not entirely inconsistent with a criminal design.

But there were other suspicious matters. Only a few days later Aram was arrested for debt. The officer, who knew his means, was astounded when the needy schoolmaster produced quantities of guineas and paid the debt on the spot. It is true that this led to Aram's arrest on a charge of stealing Clark's things, but the evidence was not strong enough and he was discharged. About this time he also paid off a mortgage, so that his means had suddenly increased for no obvious reason. It was only after many years that people remembered that Mrs. Clark's dowry was missing, and associated the two facts. At the time they believed that Clark had the money.

Soon after this Aram left Knaresborough. Why he should do so is a matter for conjecture. He left ostensibly on a visit to some relatives, but the neighbours asserted that they still saw him creeping about at night. Mrs. Aram flatly denied this. However that may be, by April, 1745, he had found his way to London and henceforth, so far as is known, his family knew him no more.

There is a curious story that, posing as a man of means,

with an estate in Essex, he visited a lady who was under the protection of a man from Leeds. The latter found him at her house, and recognising him, armed the lady with a few pertinent questions by which she could test his *bona fides*. When next he came she found an opportunity to ask him about Knaresborough. In some confusion of manner he admitted that he had been there on business. When this question was followed by the inquiry whether he knew Daniel Clark he was visibly confounded. He faltered out that he believed that he had read about a man of that name in the newspapers, but why should she ask him about a shoemaker, hastily adding that such was, he believed, the occupation mentioned in the papers. Then he began to ask questions about her interrogatory. The lady replied that the gentleman he had seen came from Leeds and thought he recognised an acquaintance, but as it was all a mistake it was no great matter. But it was a great matter to Aram, who came no more.

Though for a time he lived on his means, he soon had to find an occupation. He became Latin and writing master at a private school in Piccadilly, where, as part of his remuneration, his employer taught him French. After that he became writing master at a school at Hayes, in Middlesex. He may, though it is not certain, have visited France. His last employment was as a law copyist, a steady, but unremunerative and essentially unexciting occupation. Eventually, during the latter part of 1757, he was engaged as usher (or assistant-master) at King's Lynn, his appointment being duly confirmed by the Town Council. Among his pupils there was James Burney, afterwards an Admiral, brother of Fanny Burney. In addition to his post, he earned money by taking private pupils. There was a lady with him, his niece he said she was, and he found her lodgings at a baker's. His own quarters were a room in the master's house. Some afterwards said that she was his mistress. Others that she was a daughter. A few indeed have been obscene enough to combine the hypotheses. Whatever the relationship, there is a plausible reason for the deceit. An usher's salary and quarters were designed for a bachelor. A mistress must be disguised as a relative. A daughter would lead to inquiries about the rest of the family. Whoever the lady was, there she was, but what became of her is unknown. There is a similar conflict about his life at Lynn. According to some he was a learned,



cultured gentleman whose society was much sought after by the local clergy and professional men. According to others he was a solitary, moody, moping individual averse from all social life. Probably the truth lies between the two. An elderly unknown assistant-master would hardly be chosen as an equal companion, but he must have had to meet men who could recognise ability and respect it.

One thing is certain, that he was recognised, and the news that he was living there soon reached Knaresborough. As soon as a warrant was issued, the parish constables went as straight to Lynn as a homing pigeon makes for its loft. The current story is that a groom travelling with a stallion who had lived at Knaresborough saw him at Lynn and took the news back. It is at least probable: for somebody saw him.

Meanwhile, the disappearance of Clark remained a mystery, though none thought it to be one. No one, not even his family, believed him to be dead. Indeed, his brother-in-law even went so far as to sue him, and when he did not appear to answer the claim, had him outlawed, as was then the practice. The outlawry was declared on 20th October, 1746, and remained on the records until 1832, when someone with a glimmering of sense, thought that a man who had been murdered eighty-seven years ago did not deserve to have the entry renewed, and omitted it. Houseman alone gave a hint of uneasiness. Though it escaped comment at the time, his townsfolk noticed that whenever the Lidd overflowed its banks, he wandered along the stream as far as St. Robert's Cave, the reputed home of a mediæval hermit. He had reason. The mystery of Clark's disappearance might be solved by the swollen stream.

At last on 1st August, 1758, a labourer named Thompson while digging at Thistle Hill, near Knaresborough, brought to light some human bones. Two days later he uncovered the rest of the skeleton. The news caused great excitement in the town and for some reason the popular imagination jumped to the conclusion that the bones were Clark's and that he had been murdered. Why the mere unearthing of a skeleton should cause this *volte-face* it is too late to inquire. The coroner was informed. Surgeons were called to examine the remains, and on the 14th August the coroner and his jury "sat upon" them. Witnesses deposed that about fourteen years before, they had noticed, at the spot where the bones were found,

the earth recently disturbed. Mrs. Aram gave evidence that she believed Clark to have been murdered, and one witness swore that, as Clark was the only person missing thence in his time, the skeleton must be that of Clark. The surgeons were sure of it. The bones were those of a young man of Clark's age and size and had lain on the ground for the right period. The jury were convinced. The verdict was that the body was Clark's, and that he had been murdered by a person or persons unknown.

The local worthies then proceeded to apply what they considered an infallible test. They brought up Houseman to see the bones. He responded beautifully. The summons caused him alarm and confusion. He came with reluctance and, with visible repugnance, took up one of the bones when ordered so to do. But all these signs of guilt did not evoke any response from the dead. In fact the contrary occurred. Houseman said, "This is no more Dan Clark's bone than mine." Asked his reason he said that he had a witness who saw Clark after his disappearance, and sure enough the man was produced and declared that such was the case. For some reason this was thought conclusive, though why Daniel Clark could only have been murdered on 7th February, 1745, is not obvious. The coroner was still in the town. He summoned a fresh jury whose verdict was an unknown person murdered by someone unknown. Incidentally, as all the evidence of murder related to Daniel Clark, these events do not reflect much credit on the coroner's intelligence. It was about equal to his law, for he should have known that only the Court of King's Bench could authorise a second inquest on the same body. It is just possible that Houseman's signs of guilt were not misplaced. There is a story about a Jew pedlar, a young man who had been in Knaresborough, but no one had seen him go. But that may be mere idle gossip.

The jury having decided that the remains were not Daniel Clark's, the local Justice of the Peace decided to issue a warrant to arrest Houseman and Aram for murdering Clark. The evidence available was the same as when he had disappeared. The only charge was that men had jumped to the right conclusion, but had found the wrong body. Now came the turn of Houseman. He was examined, and like most other criminals he said too much and too little. He would only admit that he was with Clark and had left him at Aram's house,

but indicated that there was more to tell. He was committed to prison and on the way convinced his custodians that he was conscious of guilt. When they reached York, the Justice, by a coincidence hardly fortuitous, happened to be there, and to him Houseman then confessed that he had seen Aram strike Clark several blows when they were near St. Robert's Cave, but he knew nothing more, as he ran away. Afterwards Aram came back alone. After that he described where the body lay—which he could not have known had his story been literally true—and at the precise spot he mentioned inside the cave men dug up a body. At the inquest many witnesses deposed to what they had heard. The evidence was mostly hearsay, but a coroner is not bound by the laws of evidence as at a trial. What was certain was that this dead man had been murdered by a crushing blow on the base of the skull. The jury found that this body was Clark's and that he had been murdered by Houseman and Aram. The former was in custody. The next day, 19th August, Aram was arrested at Lynn. He reached Knaresborough in custody on the 21st.

The return of Aram was greeted by a crowd. His wife and daughters went to see him, but they had to wait until he had finished conversation with the local notabilities. The wife met with an off-hand recognition. Naturally he did not know his daughters whom he had left as little children. His examination by the Justice was inconclusive. He knew nothing about Clark's disappearance. For the most part he said he did not remember when facts were put to him. He was ordered to prison, but like Houseman, manifested a desire to say more, and was brought back. Then he admitted that he with Houseman and Terry had aided Clark to remove goods from the latter's house. Eventually all four went to St. Robert's Cave, where they beat most of the plate flat. By then it was nearly four o'clock, much too late for Clark to set off, and it was arranged that he should remain in the cave until the next nightfall. Terry undertook to bring food. Next night all three went to visit Clark, but he (Aram) remained on watch outside. He heard a noise which he put down to beating out the rest of the plate. After an hour the two came out and told him that Clark had gone. Then they went back to Houseman's. Afterwards Terry told him that he had disposed of the plate in Scotland. That, declared Aram, was all he knew.

Terry was at once taken and examined. He met Aram's

allegations with a flat denial, but was also committed. The three had a long wait for trial. The next Assizes were not until March, 1759, and then the only event was a successful application to postpone the trial. The prosecution were in a difficulty. Apart from the confessions, the evidence, so far as it was admissible, merely established a case of grave suspicion. The question had to be faced whether one of the prisoners should be admitted to give evidence. Houseman's story was the most direct, but there were inconsistencies; and to use him would mean that Mrs. Aram could not give evidence. On the other hand, Aram's statement was consistent with Clark not having been murdered, but, if believed, he would implicate both the others. Terry declared he knew nothing and his evidence would of course be useless. Aram got an inkling that Houseman would rat and inquired about the admissibility of his evidence. In the meantime he was preparing his defence and occupying his spare time in writing and study. On 28th July, 1759, the Summer Assize began. Mr. Justice Noel took the pleas of the Crown. True bills were returned and on 3rd August the three men came up for trial. Houseman had counsel. Aram had not. The former's trial was a mere form. No evidence was offered and he was accordingly acquitted. Then came Aram's turn. Mr. Fletcher Norton, K.C., a celebrated hectoring leader, with three juniors, was charged with the prosecution. The opening speeches have not been preserved. The first witness was Houseman, who in the main repeated his confession. If believed, the jury could convict on that alone, but it is a rule of practice, almost a rule of law, that the evidence of an accomplice must be corroborated. There are too many reasons against relying solely upon such evidence, and accordingly witnesses were called to prove the events of the fatal night, the prisoner's unexplained possession of sudden means, what happened at his arrest, the finding of the body and the medical evidence that the deceased had been killed by violence. The case for the prosecution had been thoroughly and competently revised and followed the familiar course of such trials. Aram was then called on to make his defence. He read his celebrated speech. After introductory remarks concerning his ignorance and inexperience in the ways of the law, and a protest against being charged with a crime of which he was incapable, he made his points. His whole life, he declared, refuted the charge. "I concerted not schemes of fraud,

projected no violence, injured no man's person or property. My days were honestly laborious, my nights intensely studious," and he remarked that no man was "ever corrupted at once. Villainy is ever progressive." At the time of the murder he had just risen from a sick bed and indeed had never fully recovered. Nor had he any motive to murder Clark. Secondly he averred, there was no evidence that Clark was dead. The inference from his disappearance was too fallible. He cited the case of a manacled criminal who had escaped from York Castle in 1757, and never been heard of since (his remains were found in 1780). The skeleton proved nothing, as was shown by numerous instances which he cited. Indeed another skeleton had been identified as Clark's. Moreover, there were authentic cases of men reappearing after others had been convicted of murdering them. His first example was that of the Perrys for the murder of William Harrison in 1661, a celebrated case, though modern research has tended to prove that it never occurred. Then with a general denial of guilt he concluded with these words: "I, at the last, after a year's confinement, equal to either fortune, put myself upon the candour, the justice, the humanity of Your Lordship, and upon yours, my countrymen, gentlemen of the jury." It was a remarkable speech, but its merits are purely academic. No lawyer would have been content with such an appeal. Prepared as it was in advance, it ignored the proof advanced against him. There was no comment upon Houseman's evidence or upon his credibility; nor was there any attempt to answer or evade the corroborative evidence. It is useless to declare "I did not do it" when the evidence is that you did. It is idle to say, "I had no motive" when proof shows both motive and attainment of the desired gain. Such evidence must be dealt with to convince the jury that it should not be accepted or does not prove the fact. Nor is it of any advantage to cite other instances to discredit evidence which points definitely to murder at a particular place, and a definite place of burial, and when a body has been found at the designated place, obviously murdered in the way described. Mere reasoning has never weighed much against definite, positive evidence, and as a defence the speech was futile. Even an alibi would have stood more chance. The whole prosecution rested upon Houseman. If the jury could be brought to believe that the turncoat was the murderer, an acquittal was possible, for, if he were wholly

discredited, the rest of the evidence might be explained away. The fact that contemporary attention was directed to the defence shows that Aram's cross-examination could not have had any point, if indeed he did cross-examine at all. To question witnesses is an art which demands both practice and natural ability, and there is nothing in Aram's speech which suggests that he had any aptitude for the task. Consequently the case must have been "dead," and the Judge would not spend much time upon the summing-up. The jury certainly had no hesitation in pronouncing Aram guilty. He received both verdict and sentence with composure.

Then came the trial of Terry. The only evidence against him was Aram's confession, which was not admissible and accordingly he was acquitted without trial. That day, he rode rejoicing out of York into oblivion.

The execution was fixed for the 6th August, and in the few remaining days of his life Aram set to work to compose a justification and to see his visitors. To a clergyman he admitted the murder, but attributed it to his belief in an intrigue between his wife and Clark, a most unlikely story. He assented to the suggestion that the murder was not at the Cave and to another that Houseman had urged him to murder his wife in order to close her mouth. Indeed, the most reasonable hypothesis on the known facts is that Clark was murdered in or near Aram's house. In spite of his assured air, Aram was profoundly moved by the disgrace, and on the night before his execution attempted suicide. Although this left him weak, the sentence was duly carried out on the Knavesmire, in the presence of an immense multitude. The sentence went further and directed his body to be hanged in chains at Knaresborough, and this was done. There it remained for many years, and tradition asserts that, as it disintegrated, his widow gathered up and buried the fragments that fell. A local physician, Dr. Hutchinson, one night stole the skull, and this is now placed in the Museum of the Royal College of Surgeons.

Houseman incurred the full force of public dislike of an informer. A mob, thirsting for his blood, chased him through Knaresborough on his return. He never afterwards was seen in the daytime, and soon removed from the town. He is said to have attempted several times to hang himself. At last he returned to die in 1777, and his body was secretly removed

to Marton for burial, lest scandalous tumults should break out at Knaresborough.

A subsidiary mystery is why one Francis Iles of York was able to suppress such part of the examinations as reflected upon him. It would seem that he had received some of the goods and his reputation was that of a "fence." But that part of the case was never mentioned.

Thus died Eugene Aram, a man of natural, even of brilliant, ability, who in happier circumstances might have lived to earn a scholar's reputation and to gain credit for his country. Falling, one knows not how, into temptation, he brought himself to a shameful end and involved with him an innocent family.

*"Murder will out."*

*The Trial of Dr. Dodd*





## THE TRIAL OF DR. DODD

ON 27th June, 1777, the streets and houses on the route from Newgate to Tyburn were thronged by an immense multitude who came to see a parson die on the gallows. It was the famous preacher, Dr. Dodd, who had secured as a special favour that he might make this last journey in a coach. Though he tried to conceal himself, he was seen by many, who remembered to their last moments the dreadful despair of his ghastly face. At Tyburn the crowd had waited for hours, and before the coach arrived it had swelled to such dimensions that the memory of man could not recall so large an assembly. At last the coach came, followed by the cart in which rode his fellow victim, a young man attended only by his father. As the procession moved on, all hats were removed and the long-threatened rain fell in torrents. But the crowd had come to see a memorable execution. They stayed, and in their turn were startled at the agony depicted on the face of the sufferer. He had been attended by fellow-clergymen and friends, but when he saw the friendless state of his companion he forgot his own doom and devoted himself to ministering to the wretched youth. Dr. Dodd had committed forgery, and therefore had to die. The other had attempted to commit suicide, and the law, in its horror at such an act, was now to punish the attempt by completing it. To-day neither could be sentenced to death. After comforting the other, Dr. Dodd turned to his companions and accepted their religious ministrations. All this took place in deathly silence. The last words were soon said; but the public heard none of them. Dr. Dodd had indeed prepared a speech from the gallows, as was then customary, but so great was the multitude that few could have heard, and he judged it best to go silent to his doom. The hangman then made ready. His more famous victim whispered earnestly to him before the nooses were adjusted. When all was ready, the cart was driven away, leaving the two men hanging. The executioner at once ran to Dodd and steadied his legs.

There he hung until the prescribed period was over. Then the bodies were cut down and handed to their friends. Dr. Dodd's party at once set out in a coach for Goodge Street, where a hot bath and a surgeon were waiting to make an attempt to revive him if life were not quite extinct. But whatever chance may have existed was defeated by the throngs which encumbered the streets. The coach took an interminable time to travel the distance, and, in spite of all that human skill could do, the body remained inert.

Dr. Dodd had been a notable figure in London.

Without birth or influence, he had made a rapid advance. At an early age he was a fashionable preacher, an accepted author and a man to whom the aristocracy entrusted their sons. Having achieved all this by the age of thirty, there was no position in the Church to which he might not legitimately aspire. But a lack of balance, which led him to a life of display beyond his ample income, and to commit follies fatal to the reputation of a clergyman, at last resulted in the forging of a bond in order to raise money owing to pressing creditors. The forgery was discovered, and from that moment his doom was sealed.

He was the son of the Vicar of Bourne, in Lincolnshire, and was born there on 29th May, 1729. A promising scholar, he gained in 1745 a sizarship at Clare Hall, Cambridge. His undergraduate career was noteworthy. His application to his studies pleased his tutor and gained for him the position of 15th Wrangler. Apart from that he was a social success. His manner was pleasing, he was apt in conversation, and shone in undergraduate circles. His love for dress and dancing and his sprightly wit made him an equal favourite with women. And he earned money for his pleasures by his pen, succeeding in that venture when he was but eighteen. It was his success in speaking and in writing that led him, on taking his degree in 1749, to descend upon London instead of waiting to see whether he could gain preferment at the University. He had no defined plans. He thought that he could make a name in literature. He had some thought of the Bar, but took no steps to join an Inn. Instead he took to writing poetry, and for amusement he took to debating and to other grosser pleasures. Thus nearly two years passed, and then he took a step which in the end involved him in responsibilities which he was unable to bear. He

married. The bride was Mary Perkins, a lady with charm and beauty, but of no family. Not content with undertaking the support of a wife when he was barely able to support himself, he took a house in Wardour Street, which he furnished exquisitely. There could be only one end to this extravagance—long years dragged out in a debtor's prison. His friends were alarmed. They informed his father, who came to London to advise his wayward son. The situation was too plain to misunderstand, and young Dodd was easily persuaded to give up his house and to adopt a profession. There was only one which could yield him an immediate income, and so on 19th October, 1751, he was ordained at Caius College, Cambridge, by the Bishop of Ely, and took up his duties (how sharp a downward social curve!) as curate to the Rector of West Ham.

In the same year he published his book on *The Beauties of Shakespeare*, which earned him an immediate reputation and is still sometimes to be met with on the bookstalls. He settled down to his work and became an immediate success. His sermons attracted large congregations, and though some complained that they betrayed the fervour of a Methodist, all agreed that they were eloquent and touching. By 1752 he had been elected to a lectureship at St. James's, Garlick Hill, in the City; this, in 1754, he changed for a similar position at St. Olave's, Hart Street (Pepys's church), where he remained for some years, holding also the appointment of Lady Moyer's lecturer at St. Paul's. His reputation as a preacher was growing, and this gained for him in 1758 the position of chaplain at Magdalen House, a newly-established refuge for fallen women. The chapel there was opened to the public, and it was crowded to the doors by hosts of fashionable ladies. But he did not confine himself to his duties as a chaplain. He threw himself into philanthropic work and helped to found the society for the Relief of Poor Debtors, and the Association now known as the Royal Humane Society.

He had from ordination supplemented his income by receiving into his house at West Ham a few boys of family. He was thus enabled to proceed M.A. in 1759, and his reputation gained him the support of men of influence. In 1763, the young King, George III, made him a chaplain-in-ordinary and seriously considered appointing him tutor to the Duke of

thought that they were listening to his last sermon in public.

On the 4th February, he went to a broker named Robertson to entrust him with a secret and delicate negotiation. He had been asked, so he said, to arrange a loan on bond for a nobleman who had just come of age. He brought the bond, which was for £4,200, but had no date or signature, nor were the lenders to be present when it was signed. Robertson tried in the usual quarters, but most refused to entertain such a mysterious transaction. At last Messrs. Fletcher and Peach were found, and they agreed to lend the £4,200. Robertson informed Dodd, who then gave him the bond, bearing the signature of Lord Chesterfield, with Dodd as witness. The broker was aware that two witnesses were necessary, and so as not to delay the advance, he added his own name as the second witness. He then received the money, which he handed to Dodd, who gave him £100 as his commission.

The lenders handed their bond to their solicitor. He, for some reason, felt suspicious, and went to Lord Chesterfield, who at once repudiated the signature. The solicitor thereupon went to the Lord Mayor, who by great ill-luck happened to be an active member of the Court party opposed to Wilkes, and warrants were at once issued against Dodd and Robertson.

After arresting Robertson, the officers went with Chesterfield's agent to take Dodd. The news overwhelmed him, and he offered to make what reparation he could. The agent, Mr. Manley, told him that the only way to save himself was to restore the money, and Dodd at once produced £3,000 in notes, and gave two cheques for £700 altogether, and suffered judgment for £400 on the security of his furniture. The remaining £100 was obtained by Robertson giving up his commission. Dodd expected to obtain the bond back, but the Lord Mayor insisted upon the charge being pressed, and so he was brought up at the Guildhall. He protested his innocence, not that he denied the forgery, but on the ground that he had no intent to defraud. Tradesmen were pressing him and he needed £300. The only reason for the large sum raised was that the actual amount needed was too small for a peer to seek to borrow. He could have made the money good. "My Lord Chesterfield," he pleaded, "cannot but have some tenderness for me as my pupil. I love him, and he knows it. There

is nobody wishes to prosecute. I am sure Lord Chesterfield don't want my life. I hope he will show clemency to me. Mercy should always triumph over justice." The Lord Mayor insisted on committing both men for trial. Dodd was taken on foot through the streets to Wood Street Comptor, thus giving the populace the unusual experience of hooting and jeering at a clergyman in the hands of authority on a capital charge.

Little time was lost. On 19th February he was brought up at the Old Bailey to plead to the indictment. Mr. Mansfield and Mr. Davenport appeared to prosecute, Mr. Howarth, Mr. Cooper and Mr. Buller represented the prisoner. Though two men had been committed, the indictment was against one only. The other's name appeared on the back as a witness. Robertson had succeeded in convincing the prosecution that he was a mere dupe and the charge against him was dropped. Before pleading, Dodd objected to the indictment. His point was that he had been committed with another and the indictment had been found on that other's evidence. His counsel moved to quash the indictment, and after all the legal gentlemen had had their say, the Court persuaded them to agree to the trial proceeding, promising to reserve for the opinion of the Judges at Serjeant's Inn the question whether Robertson was an admissible witness. Thereupon Dr. Dodd pleaded Not Guilty. Three judges attended : Mr. Baron Perryn, Mr. Justice Willes and Mr. Justice Gould. The trial was soon over, since there could be no dispute as to the facts. Lord Chesterfield and the other witnesses gave evidence and then the prisoner was called upon for his defence. It was a mere repetition of the too familiar plea of the detected defrauder, that he never meant to defraud. He added that he had been prosecuted after the most solemn engagement to the contrary given him by Lord Chesterfield's agent. Then he referred to the evil consequences which would ensue to his wife and creditors if he were convicted, and ended : "If, upon the most impartial survey of matters, not the slightest intention of injury can appear to anyone . . . and if no injury was done to any man upon earth, I then hope, I trust, I fully confide myself in the tenderness, humanity and protection of my country."

The summing-up was short and the jury retired, but returned almost at once with a verdict of Guilty, but added a recommendation to mercy. Dr. Dodd could have had no

illusions as to the verdict, and he probably made his appeal with the object of obtaining such a recommendation. There was, indeed, much to be said in favour of mercy. The offence was an isolated one, there had been complete restitution on what certainly looks like a promise of immunity, and the consequences to the prisoner were terrible, even if he escaped all judicial punishment. For the time being sentence was deferred until the Judges had given their opinion whether Robertson's evidence was admissible. Dodd went back to Newgate, where he stayed for a long period of waiting. He occupied himself in writing a book, published under the title of *Thoughts in Prison*, and in ministering to his fellow-prisoners. On 26th May, 1777, the Judges, having decided that the trial and conviction were good in law, Dodd appeared at the Old Bailey for sentence. It was, and still is, the practice to ask a convicted felon whether he has anything to say why sentence should not be passed upon him. The wretched man read out a moving appeal, composed for him by Dr. Johnson, who, though only having the slightest acquaintance with him, had been moved by compassion to alleviate his sufferings. The reading of the speech was an agony to the prisoner, but he struggled through to the end, and then was so overcome that it was some time before the Recorder could pass sentence. He had no discretion, for the only penalty was death, but he took occasion to warn the prisoner not to expect a reprieve.

Now came the great effort on Dodd's behalf. There had been a revulsion in his favour. The promise made and broken, and the fact that Lord Chesterfield had given evidence—though he could not refuse—caused men to think that the prisoner had been ill-used. The newspapers were filled with paragraphs and letters all advocating a reprieve. Nearly 30,000 signed a petition. Others exerted influence more privately. Even the City presented a petition, composed by Dr. Johnson, who worked manfully. He wrote to the Lord Chancellor and to the Lord Chief Justice. He petitioned both the King and the Queen, and even composed Dodd's last sermon which he preached to the prisoners at Newgate on the Sunday before his execution. But all efforts were in vain. As Dodd had been unfortunate in his Lord Mayor, so he was unfortunate in having his ultimate fate decided by the young King, advised by the aged Lord Mansfield.

It was then the custom for the King to consider death

sentences at a meeting of the Privy Council, and Dodd's case came up at a meeting on 13th June, 1777. Lord Mansfield had the chief voice. He was moved by the fact that there had been some notable cases of forgery recently, and on this occasion the crime was committed in abuse of a position of great trust. The current ideas on punishment then favoured the notion that severity was the best deterrent, and Lord Mansfield was not disposed to make an exception which might render it difficult to execute the supreme penalty against less prominent offenders. The King was frankly prejudiced. He was a young man who abhorred vice, and Dodd had already excited his disgust. His past life had not been creditable to a clergyman, especially to one who had been a royal chaplain. They decided that Dodd was to die. The execution was fixed for the 27th of the same month.

Even now there was a faint hope. Friends renewed their supplications, but all in vain. On the 26th Dodd saw his wife and friends and bade farewell to the world. His remaining hours were devoted to preparation for the next world, and his dread and horror at his shameful end drove him to penitence and prayer. Those around him were shocked at the corpse-like pallor and the agony of his expression as on the fatal day he prepared to mount a coach once more to drive along those streets where formerly he had been driven in splendour, but now was destined for Tyburn. His end has been described.

Thus died William Dodd, who by his eloquence and brains had overcome the disabilities of poverty and the lack of influence, and was established in a career at an age when the fortunate who begin with all advantages have barely put their feet upon the ladder. But he was a weak man, without morals or discretion, and when temptation came his way he fell at once. Fortunately his parents had not lived to see his disgrace but his poor wife, faithful to him in his misfortunes, dragged on a wretched existence, insane and poor, for ten more years. When she died, the family came to an end. There are none who trace their descent from that gifted, drifting, versatile and wretched man.





# *The Trial of Warren Hastings*



## THE TRIAL OF WARREN HASTINGS

WARREN HASTINGS was the first Governor-General of British India. The East India Company had begun as a trading enterprise but by degrees had added to its commercial pursuits the attributes of sovereignty. Supremacy in India had been won by the triumphs of Clive, and common expectation had settled down to an enjoyment of the fabled wealth of the East. The British Government exacted tribute, the shareholders demanded increased dividends, with the result that the local administrators, faced with the task of reorganising a land recently ravaged by war and with the necessity of remitting vast sums to England, found their position impossible. In a few years the Company was reduced to hopeless insolvency, and was forced to come to the State for assistance. That assistance was given, but at the price of a measure of control. Two Acts were passed in 1773, one to provide finance and the other to regulate administration. The latter Act was imperfect. The Government of British India was vested in a Governor-General and a Council of which he and four others were members, and a Court was set up for the administration of justice. The Governor-General was seated at Calcutta with control over the Governors of Bombay and Madras. The Act was couched in vague terms and did not afford effective and definite rules for the vital matters upon which good government alone could be based. The relations between the Governor-General and the Council were left uncertain, and as he was only one of five, with a casting vote in case of equal division, he might and did find himself in a minority, though bearing all the responsibility for failure. His control over the other Presidencies was not effective and he might and did find himself committed to measures which he would never have sanctioned. The spheres in which the Council and the Court were to exercise their respective functions were not marked out, nor was any care taken to state or define the system of jurisprudence which the Court was to adopt.

As if these problems were not enough, the Company's position was dual in two respects. It was at once the Government and a trading concern. As Government, its powers were derived from the British Parliament, and from grants and appointments from native rulers, whose position as sovereigns or as subordinates of the Grand Mogul would have defied any lawyer to state with precision. Moreover the new régime was almost at once tested by a war which threatened its very existence.

Warren Hastings owed his selection to a long and honourable career. He had been educated at Westminster, where he formed a life-long friendship with the poet Cowper, and was a fellow-pupil with Elijah Impey, the new Chief Justice.

As a youth he had been left an orphan and thereby deprived of the hopes of an Oxford career by his guardian, who had procured him a writership under the East India Company. In India he had pursued the normal career of a subordinate official, but when troubles came he rose rapidly. He escaped by good fortune the horrors of the Black Hole, and after acting for the Governor of Calcutta at the Court of Surajah Dowlah, he shouldered a musket under Clive. That genius very soon recognised Hastings' merits and appointed him as Resident at the Court of Meer Jaffier, the successor of Surajah Dowlah in the rule of Bengal. In the period of misrule that followed, Hastings kept free from the prevailing scramble for quickly but doubtfully-earned wealth, and on reaching England in 1764 he was not, according to the standard of the "Nabob," a man of any great means. For several years he lived here in retirement, but in 1768 he was appointed one of the Council of Madras, where his reform of the Company's business and finances earned him promotion to be Governor of Calcutta, an office conferred upon him in 1772, which he held when appointed to be Governor-General.

His Council consisted of four members : Barwell, a man of great experience in India, General Clavering, Colonel Monson, and Philip Francis, the last named being the reputed author of *The Letters of Junius*. These three owed their places to their Parliamentary connections in England, and knew nothing of India. Yet at once, headed by Francis, they set up in opposition to the Governor-General, who found himself in a permanent minority.

His position was the more remarkable in that it passed

the wit of man to say what constitutional position he occupied. The great Empire of the Moguls still existed and most of the native rulers owed at least a nominal allegiance to the Grand Mogul. The Company by its servants exercised functions delegated to them by the Nawab of Bengal, who was in fact their nominee. Over some princes the Company claimed dominion, with others the tie was the bond of treaties. In some matters the Governor-General was exercising sovereign powers, in others he was the delegate, while at the same time his authority was limited by the control of the Company, which was in turn bound by statutes and charters, many of the provisions of which were so loosely drawn as to encourage doubt and disobedience. The other Presidencies had separate administrations. They could and did ignore Calcutta, but their security was of vital importance in India. Hastings found himself administering provinces lately ravaged by war, he was forced to reconstruct the methods of administration, compelled to raise and remit moneys to England, and faced with persistent opposition from an irremovable majority. And in spite of all, with brilliant persistency and resource, he vindicated the interests of Great Britain in India.

The majority endeavoured to force him to resign. He did authorise his agent in England to proffer his resignation in certain events, but withdrew that power in 1775. The first important step of policy that Hastings adopted was to come to an arrangement in 1774 with the Nawab of Oude, with a view to using Oude as a bulwark against the Mahrattas. This policy had been suggested by Clive. The Nawab demanded the assistance of English troops to overcome the Rohillas. These were lent him, and the victory was followed by more than the usual atrocities on the part of the ruler and his followers. Soon afterwards an accusation was made by Nuncomar against Hastings. Nuncomar had been a candidate for the post of deputy for the ruler of Bengal, but another was preferred. Hastings had in former years fallen out with him. He now said that Hastings had accepted bribes. The Council voted for an inquiry. Soon afterwards Nuncomar was charged with conspiracy and then with forgery. He was tried by Sir Elijah Impey, the Chief Justice, with a European jury, convicted and hanged. I will not stay to consider the difficult legal and Constitutional questions that arose concerning this trial. Though the conviction was welcome, Hastings swore

an oath that he did not promote the prosecution, and it was not charged against him at his trial. In 1777 Hastings' agent, alarmed at the attitude of the Home Government and the Directors, placed his resignation in the Company's hands. In July, Mr. Wheeler arrived to fill the vacant place. The usual dispute arose with the Council, for Hastings relied upon the withdrawal of his agent's authority, and eventually the High Court of Calcutta pronounced the resignation invalid, and Wheeler became a member of the Council. Monson had gone and in November General Clavering died. Henceforth Hastings was in general supported by the Council.

The American Revolution was by this time absorbing the energies of this country. France was about to declare war and French agents were stirring the princes, who were watching their chances. In 1777 the Bombay Government became embroiled with the Mahrattas. Hastings planned to crush them, but Hyder Ali, the ruler of Mysore, began hostilities against Madras. Once again his forces swept over the Carnatic, the British forces were defeated and it seemed with the advent of French forces that the work of Clive would be destroyed. Hastings threw himself into the struggle. He realised that Hyder Ali was the main danger and strained every nerve to oppose him. Eventually, despite the arrival of French troops in 1781, Sir Eyre Coote won the Battle of Porto Novo in 1782. Soon afterwards the Mahrattas made peace, the French withdrew after the Treaty of Paris, Hyder Ali died and his son made his peace. The struggle was over, and British rule remained. One of the main problems had been to raise money, and this led to two celebrated incidents. The Rajah of Benares was a dependent of the Company and was asked for a contribution. He refused and was fined £500,000. Hastings went in person to arrest the Rajah and was besieged in Benares with a small force by the subjects of the Rajah who rose in his defence. The Governor-General was equal to the occasion. The Rajah's forces were defeated and he was deposed.

The position was not clear. As in the case of the Rohillas, the demand on the Rajah related to matters outside the Presidency territory, and it was doubtful how far Hastings had or had not power to act. The Council had condemned the Rohilla arrangement, but, as the Rajah of Benares had paid, though reluctantly, in 1778, 1779, and 1780, this trouble arose



PEACE'S HOUSE AT PECKHAM  
(From a photograph supplied by Rev N Kynaston Gaskell)





JOAN OF ARC  
dedicating herself to God and Country.  
(After the painting by Wm. Etty )

when the Council acted with him. Unfortunately the administrators appointed to govern the country after the Rajah was deposed behaved with great oppression and were removed. After Benares came Oude. The Nawab had died and was succeeded by his son. The new ruler's mother and grandmother, called the Begums of Oude, had retained the late Nawab's treasures and lands. In the disputes that arose the Council had decided, against Hastings, that the Begums were to be left undisturbed. Naturally a demand for contributions was not welcome and when, in September, 1781, Hastings met the Nawab an arrangement was come to. The published terms did not mention the treasure, but it is clear that some understanding existed. The Nawab seized the eunuchs who administered the Begums' estates and forced them to sign bonds. By February, 1782, £500,000 had been extracted. To get more the unfortunates were tortured, but nothing was gained and they were released in December. Rightly or no it was believed that the treasure amounted to £3,000,000. The Nawab presented Hastings with £100,000. He asked leave to retain his money. Leave was refused and he paid it into the Company's funds. It had been the custom for the Company's servants to accept large presents. The Act of 1773 forbade the practice, but Hastings appears to have found it more convenient to take the moneys in order to pay them over to the Company than to refuse.

A third incident was the appointment of Deby Singh to administer Dinagepore in 1780 when the Rajah of that place died, leaving a disputed succession. It was alleged that Deby Singh was guilty of fraud and oppression. There was undoubtedly unrest. The Company's resident reported adversely of Deby Singh, who was summoned to Calcutta. There a new inquiry was held and he was absolved.

The course of events in England must now be described. In December, 1775, the Directors had approved the action of the Council, and Lord North, the Prime Minister, had also declared against Hastings. It was in consequence of this news that Hastings had authorised his resignation. After that the country became absorbed in the American troubles, but in 1781 the Company's charter was about to expire and Indian affairs became important. The Commons appointed two Committees in 1781, a Select Committee of which Burke was a member, and a Secret Committee over which Dundas presided.

The reports were adverse to Hastings. In March, 1782, the Marquis of Rockingham, an old patron of his, became Prime Minister. Burke was now in the Government and he threatened to resign if nothing were done. Accordingly in a Committee of the whole House, Dundas carried a resolution condemning Hastings' schemes of conquest. On 30th May, 1782, the Commons resolved that Hastings should be recalled. The Directors obeyed, but their decision was overruled by the Court of Proprietors. Next year Dundas again demanded his recall, and Burke denounced him as "the grand delinquent of all India." The Coalition proposed Fox's India Bill of 1783, but its defeat in the Lords caused George III to dismiss the Ministry and make Pitt Prime Minister. Dundas joined Pitt.

On 30th July, 1784, Burke moved for papers relating to the case of the Begums, but Pitt opposed in a speech which eulogised Hastings. In 1785 Hastings finally retired, and arrived in England, where he was enthusiastically received. On 25th June, 1785, Burke gave notice of motion to discuss his conduct, but the session ended too soon to pursue the matter. Next year, with singular imprudence, Major Scott, who looked after Hastings' interests in the Commons, recalled the fact that the motion had not been proposed. Burke at once took up the challenge. On 4th April he tabled nine Articles of accusation and produced twenty-two more. Hastings petitioned for leave to reply, and was called to the Bar of the House. He was not skilled as an orator, and he bored the members with an extremely long statement read from a document. On 1st June, 1786, Burke's motion as to the First Article condemning the loan of troops against the Rohillas was negatived. On 13th June came the motion of the Second Article concerning Benares. The Government Whips were out against the motion, but, to everyone's surprise, Pitt supported, and the motion was carried. This change of attitude is attributed to Dundas, who had, in the former debate, been faced with the fact that he had reported against Hastings and could make no adequate reply. Next year the matter was revived, when Sheridan made a speech, celebrated in the annals of Parliament. In April, 1787, a Committee was appointed to draw up Articles of Impeachment. An attempt was made then and later to find room for Francis, now an M.P., but the House would never allow him to appear against a personal enemy, who had in 1780 wounded him in a

duel. On 10th May, 1787, impeachment was voted and the Commons appointed their managers, of whom the leaders were Burke, Fox and Sheridan. Their counsel was headed by Dr. Scott (afterwards Lord Stowell). Hastings retained Law (afterwards Lord Ellenborough), Plumer (afterwards Master of the Rolls), and Dallas (afterwards Chief Justice of the Court of Common Pleas).

The trial opened in Westminster Hall, on 13th February, 1788. The Lord Chancellor (Lord Thurlow) presided over 170 peers. The trial lasted till April, 1795, coming on at irregular intervals on 148 days. Ultimately, after many changes, the Lord Chancellor having resigned and no less than sixty peers having died, Hastings was acquitted. He left the Court absolved but wellnigh ruined.

It was a stately scene in Westminster Hall, when the Lords arrived in a long procession, headed by the junior peers and followed by the Royal Family, to begin the hearing. Within a few weeks Louis XVI was to convoke the States-General. Before the trial ended he and his consort had been guillotined, and the Terror had spent its fury.

Proceedings opened by Hastings' surrender. He knelt before the Lords, over whom Lord Thurlow, the Lord Chancellor, presided. Two days were spent in reading the Articles of Impeachment and the Answers. There were twenty long wordy Articles. The first dealt with Benares; the second with the Begums of Oude; the Sixth, part of the Seventh, and the Fourteenth accused Hastings of taking bribes and presents set out in thirteen paragraphs; the fourth contained allegations relating to contracts alleged to have been improperly and improvidently given. As to the others, it does not matter; nothing was done to prosecute them.

On 15th February, 1788, Burke rose to open the general case. For four days, in matchless eloquence, he described the history, constitution and conditions of India. He designed his speech on so large a scale that he decided to curtail it. On 18th February, he ended:

"I charge Mr. Hastings with having destroyed for private purposes the whole system of government by the six provincial councils which he had no right to destroy.

"I charge him with having delegated away from himself that power which the Act of Parliament had directed him to preserve inalienably within himself.

"I charge him with having formed a committee to be mere instruments and tools at the enormous expense of £62,000 per annum.

"I charge him with having appointed a person their diwan to whom these Englishmen were to be subservient tools; whose name was (to his own knowledge, by the general voice of the Company, by the recorded official transactions, by everything that can make a man known) abhorred and detested, stamped with infamy; and I charge him with giving him the whole power which he had thus separated from the Council General and from the Provincial Councils.

"I charge him with taking bribes of Gunga Gowind Singh.

"I charge him with not having done that bribe service fidelity, even in iniquity, required at the hands of the worst of men.

"I charge him with having robbed those people of whom he took the bribes.

"I charge him with having fraudulently alienated the fortunes of widows.

"I charge him with having, without right or title or purchase, taken the lands of orphans and given them to wicked persons under him.

"I charge him with having removed the natural guardians of a minor Raja and given his zamindary to that wicked person Deby Singh.

"I charge him—his wickedness being known to himself and all the world—with having committed to Deby Singh the management of three great provinces; and with having thereby wasted the country, destroyed the landed interest, cruelly harassed the peasants, burned their houses, seized their crops, tortured and degraded their persons, and destroyed the honour of the whole female race of that country.

"In the name of the Commons of England, I charge with all this villainy on Warren Hastings, in the last moment of my application to you."

And then, after references to the victims, the prosecutors and the judges, he concluded:

"Therefore, it is with confidence that, ordered by the Commons.

"I impeach Warren Hastings, Esquire, of high crimes and misdemeanours.

"I impeach him in the name of the Commons of Great

Britain in Parliament assembled, whose Parliamentary trust he has betrayed.

"I impeach him in the name of all the Commons of Great Britain, whose national character he has dishonoured.

"I impeach him in the name of the people of India, whose laws, rights and liberties he has subverted, whose properties he has destroyed, whose country he has laid waste and desolate.

"I impeach him in the name and by virtue of those eternal laws of justice which he has violated.

"I impeach him in the name of human nature itself which he has cruelly outraged, injured and oppressed in both sexes, in every age, rank, situation and condition of life."

The tremendous speech was often interrupted by the applause even of the Lords themselves. But it is one thing to deliver a philippic, another to manage a prosecution. It was an error to choose as Managers Members who were not trained lawyers. Even the advising lawyers were headed by two civilians unused to the forms and rules of evidence adopted by the common law. A dispute immediately arose as to procedure. Burke wanted each Article to be taken separately, but the defence said: "No. Prove all your allegations and then we will defend them." Lord Thurlow was not in favour of the impeachment and needed no encouragement to hamper the Commons. The Lords decided that the plan suggested by the defence was best.

Then Fox spoke on the charge relating to the Rajah of Benares. He was followed by Grey (afterwards Earl Grey). Then came the edifying spectacle of trained lawyers preventing inadmissible evidence being given. Objection followed objection, and the Managers were overruled time and time again. They showed an inability to understand the rules of relevance and admissibility, and from time to time they made angry protests. Each objection was considered by the Lords. They rose, went in procession to the House of Lords and returned to announce their decision. "The Lords proceed, and the trial stands still," said one of their number. Sometimes the further hearing was postponed to consult the judges, and when they were away on Circuit weeks might and did slip by.

On the fourteenth day Mr. Adam opened the second charge and eventually Sheridan summed up. This closed the Session. By that time the expense of the trial and the length to which it was running excited much discussion.

When the session reopened on 3rd February, 1789, there was a petition from Hastings as to delay and expense, claiming that the trial should proceed more quickly. The dispute over the Regency Bill absorbed attention, and it was not until 21st April, 1789, that Burke resumed, to open the Sixth Article, detailing hundreds and hundreds of lakhs of rupees which were alleged to have been presented to Hastings. On 7th May, in the course of his speech, he said of Nuncomar that Hastings "murdered this man by the hand of Sir Elijah Impey." The matter was raised in the Commons, who resolved that they had given no direction to make such a charge and ordered that it be withdrawn. Hastings' supporters had hoped that a public humiliation would induce Burke to withdraw, but he submitted, and made it clear when doing so, that he intended to pursue the trial to the end. So June came. On the 10th Burke declared that a ruling of the Lords was preposterous, but explained that he merely used the word as meaning putting the cart before the horse. Next day, Law was reprimanded. On 7th July, Burke was stopped from impeaching the credit of his own witness, which made him indignant. On 8th July, when the Session ended, Hastings made another protest. Not one tenth part of one Article had been proved. His life would not be long enough nor his fortune sufficient to enable him to complete such a trial. Had he pleaded guilty his punishment could not have been heavier.

In 1790, proceedings resumed in February. Burke, surprised at a ruling that he could give no evidence to prove allegations not charged in the Articles, protested that the Commons of Great Britain were not bound by any rules of pleading. As laymen they were ignorant of them. The evidence as to bribes proceeded slowly. Objection after objection was taken, for in truth the Managers had taken a wrong view of what would be admissible evidence. On 7th, 8th, and 9th June, 1790, Fox summed up the case on the Sixth Article, parts of the Seventh and the Fourteenth which together constituted the thirteen charges of bribery. Before then the Managers had become alarmed at the inordinate length of the case and obtained the authority of the House of Commons to abandon charges. The session ended in June and the case went for the usual long rest for the remainder of the year.

This time there was a real hitch. In December, 1790,

Parliament was dissolved, and when the new Parliament met, the question arose whether the impeachment had ended with the old Parliament. It was a difficult question, on which opinions differed. Eminent judges and lawyers took opposite sides. Sir John Scott (the Solicitor-General), thought that the old charges were ended and proceedings must be begun again. So high was feeling that the fact that such was his opinion was deemed by some partisans sufficient proof that he had been bribed. At last it was settled that dissolution does not end an impeachment, and so on 23rd May, 1791, Mr. St. John opened the Fourth Article, charging Hastings with making corrupt contracts and agencies and illegal allowances. By 30th May, the case was closed, and on 2nd June, the prisoner made his general statement in defence. No more was done that year.

On 14th February, 1792, Mr. Law spoke for the prisoner, and was followed by Mr. Plumer. Altogether they occupied eight days, and then, on 1st May, 1792, the evidence for the defence began. Now was the turn of the Managers to make objections, and they did, but not with much success. The case was beginning to bore people. There was often a difficulty in forming a Court. Often no more than thirty or forty peers were there, and Burke alone of the Managers was constant in attendance. The war which began in 1792 completed the divergence of views begun by the French Revolution, and they were no longer a united body. Besides, many impartial observers had come to see the hardships of the protracted trial. A petition by Hastings for continuous sittings produced no relief, but often the course of the case was interrupted thereafter by counter-allegations that the other side were causing delays. By 7th June, 1792, the evidence for the defence on the First Article was closed and Dallas summed up in a speech of great power.

When on 15th February, 1793, Mr. Law opened the defendant's case on the Second Article, 121 changes in the peerage had occurred. On 2nd May, the Lord Chancellor warned both sides against unnecessary interruptions. Mr. Burke was most in trouble. On 20th April, in objecting to a report by Sir J. Shore (who was then Governor-General) he said it was the production of one of the persons concerned in fabricating the defence. The other side promptly pointed out that Burke had, in a previous year, actually called Shore for



the prosecution. The defence were making great headway. They were able to call witness after witness who had been in India, for Anglo-Indian opinion was almost wholly in Hastings' favour. Residents there knew the risks that had been run and the perils that Hastings had overcome. Propaganda outside was ceaseless and a stream of returned officials and soldiers added their voices to the turn in the tide. On 26th April, Plumer summed up the defence on the Second Article, and on 9th May, Dallas opened the defence on the charges of bribery. On 25th May the Archbishop of York was moved to protest at the tone of Burke's cross-examination. He treated, so the Archbishop averred, the witness as a pickpocket. If Robespierre or Marat had appeared they could not have said things more inhuman or more against all sentiments of honour and morality. This incident nearly caused a conflict between the two Houses, but it passed over. To speed up matters the defence made no speeches on the Fourth Article as to contracts and allowances, and their evidences closed on 28th May. Burke succeeded in postponing further proceedings for the rest of the year.

Next February, counter-evidence was called. An attempt was made to call Francis, but objection to him was upheld. The tide of objection continued. Once Burke declared that Hastings had published a libel on the Directors. Hastings rose and said: "I beg leave most solemnly to deny it, and to affirm that that declaration is a libel and is of a piece with all the declarations I have heard from the authorised and licensed"—he paused and looked straight at Burke and then added, "Manager." At last the new evidence was concluded and then Mr. Law spoke, dealing with the evidence. Finally came a flood of eloquence for the Commons. Grey spoke on Benares, Sheridan on the Begums, Fox on the bribes, Taylor on contracts and allowances, and finally came Burke's speech summing up the whole case. On 16th June, 1794, he concluded. Four days later Pitt proposed and carried a vote of thanks to the Managers. Next day Burke applied for the Chiltern Hundreds and left Parliament for ever.

The Lords then discussed the question who was entitled to vote, and finally decided to leave it to the conscience of each peer whether he should vote. A committee was appointed to consider and report. Next year the report was considered. The charges were all negatived in it, and the debate of 1795

on the report concluded proceedings. On three of the bribery charges no peer voted for conviction. The greatest vote of an acquittal was twenty-six, the highest for guilty was six. Each charge was voted on separately, and on each Hastings was pronounced Not Guilty, and on 23rd April, 1795, after eight years' trial, he was formally discharged.

The solicitor for the Commons put in a bill for £61,695, of which £16,996 was disallowed. The defence cost £71,080. A discussion arose as to the payment, and eventually the East India Company granted Hastings an annuity of £4000 a year, paying the first ten years immediately. He retired into the country, making one essay in politics in 1806. In 1813, when a renewal of the Charter was under discussion, Warren Hastings then in his eighty-first year, came to the bar of the Commons to give evidence. The House rose and uncovered in his honour. Next year he was sworn of the Privy Council, the only and belated reward for his services. He died in 1818.

What was the truth of the accusation? That Burke and his associates believed it is undeniable. They were moved by generous feelings of warmth for the suffering natives of India, whose misfortunes they laid at Hastings' door. But that he was guilty of corruption cannot be truly alleged. That he strained his powers cannot be fairly denied. His acquittal was just and justified. This is true: hampered in every way, thwarted and disobeyed, he saved the Empire in India by sheer force of character, and he holds an honoured place among those who have deserved well of their country.

Names which will always be illustrious in English history were employed in the attempt to disparage and destroy a most distinguished Englishman. Those names will be the poorer by reason of their exertions. Burke and Sheridan would have been greater men had they observed a truer perspective: and the bombastic orations of the Commons' spokesmen were in the event defeated, and even rendered ludicrous by the cooler but more telling exertions of trained lawyers.



# *The Trial of Deacon Brodie*



## THE TRIAL OF DEACON BRODIE

**W**ILLIAM BRODIE'S trial is interesting for its own sake. Rarely does a determined burglar who by his nightly exploits fills the townfolk with nervous dread double that part with the career of a leading tradesman and member of the Town Council.

In this case the interest is heightened by the circumstances. He was arraigned in Edinburgh in the days preceding the French Revolution, and tried before Lord Braxfield, that legendary figure who lives again as Weir of Hermiston in Stevenson's unfinished masterpiece, according to the procedure so interesting to southerners because its appearance differs so much from English criminal procedure. The judges, who not only are addressed as "My Lord," but assume the titles of the peerage, though they remain commoners, wear judicial raiment which seems strange to those who know only the Judges of Assize. The prisoners are called the panel. The jurors number fifteen, including a chancellor who is the English foreman. The counsel too hold offices with designations unknown to the southern realm, and all the speeches come at the end of the trial. The case, too, was marked by a sensational incident, when the formidable Lord Justice Clerk, whose frown daunted the boldest advocate, was defied, and with success, by a young barrister of but three years' standing. And the chief figure in the drama when he came to die was hanged on a scaffold, which, but for mere chance, he himself would have made, and which was, in all probability, designed by him.

The prisoner had always lived a double life. His parents were born of respectable families. Both his grandparents were writers to the signet (or solicitors as they would be called in England). His father was a wright, in substantial business, a freeman of the city, deacon (or head) of his trade guild, and a valued member of the City Council. William was the eldest of eleven children, of whom only three survived

to any age. He was born on 28th September, 1741, and his father proudly recorded the momentous event in the family Bible, from which another member cut the entry, when through this child, shame and disgrace made them bow their heads.

William was brought up to his father's trade and became a freeman of Edinburgh on 9th February, 1763. He lived at home and conducted himself in business as a model young man, but his evenings were given to frivolity and debauchery. Like so many of his age he was addicted to gaming and frequenting of cockpits, and his habits must have involved him in more expense than even the son of a leading tradesman could afford. In addition to those expensive amusements he assumed obligations of a more permanent nature. He never married, but he was often absent from his home in the society of one of his two mistresses, both of whom he maintained in separate dwellings where they reared the children they bore him. By one of them, Anne Grant, he had three, two girls and a boy, and by the other, Jean Watt, two boys. A curious fact is that neither did his family know of these liaisons nor did either mistress suspect a rival. It was by writing to Anne Grant that he was traced. It was by the evidence of Jean Watt that he hoped to escape the gallows.

When and how he began his career of crime has never been discovered. In August, 1768, a bank was entered by a false key, and the thief escaped with his booty. Years afterwards, when he had been unmasked, people remembered that Brodie had been employed by the bank to do repairs there shortly before the theft. They called to mind that his occupation called him into many houses and that he had abused confidence by taking impressions of keys ; and drew the conclusion that this undiscovered crime must be laid to Brodie's account. Others, too, remembered that they had seen him in suspicious circumstances. These stories may be discounted. Wisdom after the event is easy and none of the gossips had breathed a word before the trial.

Meanwhile he followed his worthy father's career. In 1781 he entered the City Council as Deacon of the Guild of Wrights, and held that office in 1781 and 1782. Next year he was a Trades Councillor. In 1786 and 1787 he was again Deacon. His father had died in 1782 at a ripe old age, and left him an ample fortune, but it was soon dissipated. In

1788 he was in embarrassed circumstances though he claimed to be solvent.

During the latter years Edinburgh was the scene of a number of mysterious burglaries, daring and successful. No arrests were made, but this is not surprising since the watch was composed of aged and inefficient men who could never at any time have been an adequate police force. It does not follow that Brodie was the offender. There were many living in the lands of Edinburgh both able and willing to commit such crimes. The impunity with which they were committed permits the inference that the criminal, whoever he was, knew intimately the habits of the victims. Perhaps the very ease and impunity with which the early burglaries were committed led him to reflect whether he too might not repair his falling fortunes, the more so because the victims often called on him to devise more secure methods of baffling marauders.

It is not till 1786 that definite information of his crime is forthcoming. In July, 1786, an Englishman named George Smith, employed as a travelling hawker, came to Edinburgh. He lodged at a tavern in the Grassmarket kept by Michael Henderson, and there met two doubtful characters, Ainslie and Brown *alias* Moore. The last-mentioned was an Englishman who had escaped while under a sentence of transportation inflicted upon him at the Old Bailey in 1784 and was concealing himself in Scotland. Brodie was a frequenter of the tavern, and according to Smith proposed to the latter that he should join in a series of burglaries. This proposal was apparently put forward because Smith had worked as a locksmith and seemed not disinclined to a nefarious life. In November, 1786, they began, so Smith said, but in October an important robbery had taken place which was afterwards believed to be Brodie's work. To cover Smith, Brodie found him a small grocer's shop. Thereafter the two worthies committed regular inroads on tradesmen who kept goods of a kind coveted by thieves—of great value in a small bulk. Of course a receiver was essential, and, since from the commencement they went, apparently as a matter of course, to an exiled Scot in England, it is a reasonable inference that Brodie was well established and was only increasing his operations by the aid of the locksmith. In the course of 1787 the two were aided by Ainslie and Brown and the partnership was complete.



In October they caused a great sensation by stealing the silver mace of the University.

In January, 1788, the shop of some silk mercers at Edinburgh Cross was raided. As in the case of the mace a reward was offered, and this time it was announced that any accomplice who could procure the arrest of the guilty parties would receive a pardon. For some time the offer seemed to be as useless as the rewards, but it had not escaped Brown's attention. He did not avail himself of it at the time, but he stored it in his memory. The offer had peculiar attractions to him. He alone could, if recognised, be seized and sent away without trial, being an escaped convict. At this time, Brodie's credit with his townfolk received a blow. The four whiled away their time one evening with a stranger. Dice were produced and the stranger lost heavily. He did not like this and seized the dice, which proved to be "loaded." He at once lodged an information, but after wordy warfare the dispute seems to have been adjusted and no more was heard of it.

In March, 1788, the gang conceived a more daring exploit. They planned to rob the Excise Office in the Canongate. Brodie knew the buildings well because he was often called in to effect repairs; besides, a distant relation was in the Excise and had come to Edinburgh at times to the office. Brodie was most kind and hospitable on these occasions. He even went so far as to accompany his relative to the office and there was able to glean more information. Like most Government offices, it was deserted after office hours, only a watchman being on duty.

The plan being pronounced feasible, the preliminaries began. Brodie and Smith called to make inquiry for his relative. While Brodie was thus attracting attention to himself, Smith took an impression of the key of the outer door. He was then easily able to make the necessary duplicate. Ainslie meanwhile was watching the watchman to learn his habits, and he found that every night from eight to ten the office was left unguarded.

On 4th March they met to make their final preparations and the attempt was fixed for the next evening. On that day Brodie had a dinner-party. He was dressed in his usual day attire, a suit of white, and presided over the party from three till eight o'clock, when the last guest departed. This rather upset the plan, as the four had fixed to meet at Smith's house

at seven o'clock. As soon as he was free Brodie changed into black and hurried off to the rendezvous. In spite of the cold and snowy weather he was in high spirits, and burst in on the apprehensive three, singing "Let us take the road," a song from the *Beggar's Opera*, the play which seems to have been his favourite. They then seized their tools and weapons, and, furnished with masks, set forth to the Excise Office. Ainslie was to watch outside the building, and if alarmed was to blow a whistle. Brodie was to go inside but lurk in the hall, also charged with the duty of watching. Brown and Smith undertook the forcing of the doors and desks. Accordingly Ainslie went first. Then Smith, who at once got to work and was inside when Brodie arrived. Brown was still on his way, so Brodie went to find him.

He soon came, explaining that he had followed home the office-keeper who locked up, so as to avoid a surprise. Brodie then took up his post and Brown joined Smith. The two made a poor haul, not more than £17 in all, and, as so often happens, overlooked the place where a much greater sum was kept. As they were searching they heard the front door open, but paid no attention, and completed their task. As they were about to go, someone ran downstairs and hurried out, closing the front door with a crash. The two became alarmed, especially when they found that Brodie was not at his post. Ainslie, too, had disappeared. He had been watched by a servant girl, though he did not know it. His absence was due to the fact that someone hurried past him into the building and then at once someone else ran out and fled into the street. After a minute another came and slammed the door. He whistled and fled. It was Brodie, whose nerve had given. Mr. Bonar, the Solicitor of Excise, was the mysterious stranger. He was hurrying to get a paper which he had left in his room. As he went in, Brodie bolted. Mr. Bonar thought he was a clerk, and went on, and finding the paper, went away.

Ainslie, Brown and Smith met again at the appointed place, but Brodie did not turn up. He was busy establishing an alibi. He had rushed home, changed, and then went to Jean Watt's house, where he spent the night. Next day he met his associates, who made no secret of their annoyance. On the second day they shared the swag and sent Mrs. Smith off with the booty preciously garnered, which had to be

or Hubburt, wife of George Smith." The Court did not like the objection, but it turned out to be a fact, and reluctantly the Judges decided that she was not competent, and the Lord Advocate withdrew her. Thus justice was done on a technicality. The file of witnesses continued. Number twenty-six was Andrew Ainslie, and objection was at once taken that he was an accessory who had been promised freedom if he would give evidence. The prosecution denied the agreement, and alleged that an accomplice was by Scottish law a competent witness. The objection was over-ruled and Ainslie detailed the story of the crime. At one stage he was asked about a £5 note, but the defence objected. The indictment had mentioned a bank note, but the document was issued by a private bank, and was therefore in law not a bank note. The Solicitor-General denounced the objection as frivolous, but it was upheld. The cross-examination was slight, principally directed to times with a view to Brodie's alibi. Next came John Brown, *alias* Humphrey Moore. He was promptly objected to as infamous. The Solicitor-General countered by producing a pardon under the Great Seal. The defence persisted. The pardon might save him from the penal consequences, but the infamy attaching to his conviction remained. Much was said concerning the authority of Sir George Mackenzie, an old writer on criminal law, but the Judges were not disposed to worship at his shrine. Indeed, they said he was inaccurate. Lord Eskgrove, indeed, would have upheld the objection, but he said this was an English pardon for an English offence, and the law of England had made the witness competent by the grant of the pardon. So Brown was allowed to give evidence, but not until Braxfield had solemnly warned him of the consequences of perjury. He was closely, but not unfairly cross-examined, and got very heated. He went so far as to protest at being teased by impertinent questions, for which he was severely reprimanded by the Court. Mr. Clerk fastened on the making of the key, and on receiving an answer objected that it was no answer to the question. Braxfield observing that it was enough to satisfy any sensible man, Clerk retorted that it was for the jury to judge that. After this, Smith's and Brodie's statements were read and the letters Brodie sent and various papers found in his possession. The prosecution had produced evidence which established the prisoner's guilt unless a vast

amount of deliberate perjury had been committed, but their case really rested on Ainslie and Brown and the documents.

Then came Brodie's witnesses, introduced by the remark that they were called to prove an alibi. The first was his brother-in-law, and the Lord Advocate objected. The objection to such a relative was so unsubstantial that no formal ruling was given. He merely proved that he was with Brodie until just before eight. Then came Jean Watt. It had been rumoured that Brodie had married her in prison, and if true the fact would have disqualified her. Accordingly the Lord Advocate asked her if she were married. She denied it and was allowed to give evidence. She said Brodie came to her a little after eight and stayed all night. The maid also said it was eight. She told the time by the bell of the Tron Church, a manifest impossibility; but when asked where it was she said it stood in Parliament Close, a quarter of a mile from its actual site. Other witnesses proved that he left Jean Watt's house the next morning. Then came a witness for proving the information for cheating at dice, to enable counsel to suggest that that suit had induced Brodie to flee; and a final witness proved that the implements found at Brodie's house were usual implements kept by a wright. By this time it was one in the morning, and the Lord Advocate began his speech. It was an adequate summing-up of his case.

At its close Clerk rose. He had refreshed himself with a bottle of claret. He was a cross-grained young man defending a hopeless case, but determined at least to make a name. At such an hour and with such a Court and Counsel, scenes were only to be expected. His rotund opening was interrupted by a request that he would be short and concise, and he proceeded to state what in his view were the main points against his client, and the answers to them. For a time he went on without interruption, but when he came to deal with the evidence of Ainslie and Brown uproar began. He mentioned the objections made and over-ruled, but expressed his adherence to the objections. "Gentlemen," he said, "I think a great deal of most improper evidence has been received in this case for the Crown." The Judges admonished him, and he continued: "I beg to assail at the outset the evidence of these two corbies, or infernal scoundrels." "Take care, sir, what you say," growled Braxfield. Clerk went on. As he was saying that Brown ought not to be received as a witness

in any case, the bystanders broke out into applause. Braxfield reminded him that the Court had ruled. Clerk replied: "But your lordships should not have admitted him, and of that the jury will now judge." At this the Judges protested that he was attacking them, but he answered: "I am attacking the villain of a witness, who, I tell your lordships, is not worth his weight in hemp." At this stage the Dean of Faculty tried to soothe the angry man, but Clerk was not to be held in. Braxfield reminded him that the jury were to take the law from the Judges. "That I deny," retorted Clerk, and amid interruptions he continued. The Lord Advocate referred to the pardon, but Clerk replied: "Can His Majesty make a tainted scoundrel an honest man?" and the bystanders again applauded. The Lord Advocate said to Clerk that the prerogative of mercy was "the brightest jewel in His Majesty's crown," which gave the latter the opening for the pointed and discourteous retort: "I hope His Majesty's Crown will never be contaminated by any villain round it." He again repeated that the jury were judges of the law, and on being reproved declined to continue. He was ordered to go on, and repeated the obnoxious remark. Again the Judges warned him and he sat down. Braxfield asked if he had done, and he replied "No," but refused to go on unless he could speak in his own way. The Court then called on Erskine, but the Dean of Faculty shook his head. Braxfield then turned to charge the jury, but before he could say a word Clerk leapt to his feet. Shaking his fist at the Bench, he shouted "Hang my client if you dare, my Lord, without hearing me in his defence." Consternation reigned in the Court. The Judges rose and departed to consider what they should do. Eventually they returned and merely requested Clerk to continue. This time he did finish, mainly because he had exhausted his provocative material. It was an able argument, though impossible of success. What he did achieve was the making of a reputation.

This storm preceded the Dean of Faculty's eloquent but temperate plea for Brodie. He also attacked the accomplices, but on the safer ground that, though their evidence was admissible, it could not be believed. "Is it possible," he asked, "that a King's pardon can restore purity of heart, rectitude and integrity? Can a piece of parchment with a seal dangling at it . . . turn wickedness into honour? The

King has no such prerogative. This is the prerogative of the King of Kings alone, exerted only towards repentant sinners." But his main theme was the alibi. If his evidence was accepted, Brodie could not have been present at the crime. At half-past four Braxfield commenced the summing-up. The only question was, Who committed the offence?—for that the offence was committed was not in dispute. It was short and to the point. The alibi turned on the ringing of a bell, but a bell rang at ten as well as at eight. He had directed attention to the corroboration of Ainslie and Brown, and ended by expressing his opinion that both prisoners were guilty. If they agreed, then they would convict both. He mentioned a possibility that they might acquit Brodie, but never allowed that Smith might go free. It was six o'clock when he had done, and the jury retired. The Court then adjourned until one p.m.

When it again met, the jury were ready with their verdict, which was delivered in a writing sealed with block wax. The Chancellor of the jury handed it to the Court. In deep silence it was read by the Judges, who then ordered it to be read aloud. In formal language they pronounced both Brodie and Smith to be guilty.

The trial seemed over, but a last attempt was yet to be made. The indictment had mentioned the house in which the Excise Office was kept, but there were two houses. Consequently, urged Mr. Wright, the indictment was bad. A lengthy argument ensued, but it failed, and the Judges then proceeded to consider their sentence. It was a short deliberation, for the law allowed but one punishment—death by hanging. Lord Braxfield delivered sentence. His short but earnest exhortation was prefaced by a tribute to the counsel for the defence, whom he eulogised as though no storm had raged round one of them but a few hours before. When he had pronounced the last dread words, Brodie seemed to wish to speak, but was restrained by his counsel. The trial was over, and the prisoners were moved to await execution.

Smith broke down, and attended with apparent sincerity to the ministrations of the clergyman who attended him. Brodie, though at times serious, complained of their well-meant endeavours. He spent his time in settling his affairs and endeavouring to secure a reprieve. It was all in vain, and on the appointed day, 1st October, 1788, he was brought

out to die with Smith. The latter was resigned and penitent, but Brodie showed courage and coolness. He examined the drop with a professional air, and even tested the rope. The ropes were too short, and a delay ensued while they were being lengthened. Then again the ropes were found not right and a further delay ensued, which Brodie occupied in denouncing the executioner as a bungler. At last all was ready, and at a given signal the 40,000 spectators had the gruesome satisfaction of seeing Smith and Brodie die together. The incident of the rope had been, so people said, due to an attempt to defeat justice. A short drop was to be given so that when the body was handed over it could be revived, but the trick was overdone and defeated by the lengthening of the rope. The technique of hanging was then faulty, and a few instances were known of persons reviving. It was therefore sought to revive Brodie in the hope that he, too, would be an exception. It was in vain. The executioner had not bungled. Brodie had paid the penalty of his crime.

# *The Trial of Lord Cochrane*





## THE TRIAL OF LORD COCHRANE

THE de Beranger fraud of 1814 was one of the most noteworthy of the many attempts that have been made to exploit the public credulity. But its chief interest lies in the fact that one of the persons charged and convicted was Lord Cochrane, who had established a reputation for gallant daring, second to none among the many who held the seas for England during the great wars which were then drawing to a close.

The eldest son of the 9th Earl of Dundonald, Cochrane was, in 1814, though only thirty-nine, a Knight of the Bath, a Member of Parliament and a post captain. He owed little of his position to his birth. Ardent and impetuous, he had a knack of arousing the dislike of his superiors, and his politics were throughout distasteful to the authorities. His promotion was forced upon them by his daring exploits. His first command was a 14-gun brig, the *Speedy*, in which for several exciting months he harried the coasts of Spain, capturing fifty ships. On one occasion he was confronted by a Spanish frigate disguised as a merchantman. His own ship was disguised as a Danish trading ship. Escape seemed impossible, but an adroit use of the plague flag scared the Spaniards from making a close examination, and he escaped. Later, he met another frigate, *El Gamo*, and carried her by boarding—fifty-four men against six hundred. Naturally he was specially promoted. He pressed for the promotion of his second in command, which was refused on the absurd ground that the loss of life did not warrant it.

This roused Cochrane's indignation, and he replied in a letter which earned him a permanent black mark at the Admiralty. The First Lord, Jervis, had been created Earl St. Vincent as a reward for his own victory, and Cochrane pointed out that not only had the Admiral won an earldom, but that all his ship's officers had been given promotion for their services in that battle, though the flagship had lost only one man killed. The comment, though true, was worse than tactless—it was useless. The *Speedy's* commission ended in

glorious disaster when she was captured by Desaix's squadron of three ships of the line. The resentful Admiralty professed itself unable to find Cochrane another ship when he was exchanged. He employed his energies by entering as a student at Edinburgh University, attending the lectures of Dugald Stewart at the same time as the future Lord Palmerston.

When war broke out again Cochrane was banished to fishery defence off Scotland in an old converted collier. Not until 1805, when a Scot came to the Admiralty, did he obtain a chance of real work. He then was posted to the *Pallas*, a new frigate, and harried the coasts of France and Spain with great success. Once he came home with a gold candlestick five feet high at each masthead. He did not confine himself to war. In 1805 he stood as a radical for Honiton, but, refusing to bribe, was defeated. He rewarded his supporters by a gift of ten guineas each, with the result that at the election of 1806 he headed the poll; but this time there were no guineas for his expectant majority.

His frequent cruises continued, and at one time or another he met and destroyed four French frigates and captured many prizes. In 1807 he stood for Westminster with Sir Francis Burdett and headed the poll. His efforts in Parliament to discuss and redress naval abuses did not increase his favour at the Admiralty, but he held his commands. In 1808 he threw himself into the fort of Trinidad in Spain, and for a fortnight defied a whole French army. When further defence became impossible, he re-embarked his men without a casualty. In 1809, when under Lord Gambier, he organised an attack on the French fleet in the Basque roads. The attempt was successful in that several vessels were destroyed, but Gambier was averse to the attack, did not support it with vigour, and (as Cochrane averred) thereby missed the certainty of destroying the whole French fleet. Cochrane himself was made a Knight of the Bath, but in consequence of his unsuccessful attacks on Gambier in and out of Parliament, was placed on half-pay and remained unemployed during the critical years of the Peninsular War. Remembering Wellington's bitter complaints that the French were permitted to carry troops and supplies by sea to Spain almost unhindered, it is impossible to resist the conclusion that a man of Cochrane's audacity and experience might easily have shortened the war in Spain and with it the career of Napoleon.

At last, at the end of 1813, he obtained a post, in spite of the Admiralty. His uncle, Sir Alexander Cochrane, had been appointed to command in North American waters and named his nephew as his flag captain. As we were then at war with the United States, Cochrane could look forward to active work, especially as single ship combats, in which he excelled, were numerous. The Admiral sailed, leaving Cochrane to fit up and follow in the flagship *The Tonnant*, and he was actually engaged on this task when he was arrested for fraud.

At this time the Allies were hoping for a speedy end to the war. Napoleon, defeated abroad, was forced to defend France against an impending invasion. Rumours were current, mostly favourable. As each gained credence stocks rose, and when confirmation failed stocks fell. Newspapers were then not proof against the temptation to invent news with a view to promoting circulation. Some men, seeing that the stock markets were sensitive, used the nefarious plan of inventing rumours in order to raise or depress prices as suited their operations. Cochrane had made a fortune under the prize system. He had, as so many others had done, bought stocks with a view to a rise. His broker had orders to sell on a rise of one point. His uncle, Andrew Cochrane-Johnstone, had purchased to an enormous extent for those days, and his friends were also largely involved in speculation. Good news would earn them large profits.

On the morning of February 21st, 1814, a man arrived at Winchester in a post chaise. He had posted from Dover, scattering French gold among the postillions; had written to the Admiral at Deal and had let out on the way that he bore glorious news. Napoleon was killed and the Allies were at Paris. The man was dressed in a military uniform and was traced to Cochrane's house at Green Street, Grosvenor Square. Shortly afterwards two other men dressed as French officers arrived, giving similar tidings. They disappeared after reaching Westminster. The effect on the market was immediate. Stocks rose, and Cochrane, Mr. Cochrane-Johnstone and others sold their holdings and thereby made large profits. After a time the public looked for confirmation. None was forthcoming, and the boom collapsed.

This was not the first time that the Stock Exchange had suffered. On previous occasions the fraud was clear, but evidence was lacking to convict the perpetrators. This time

the Stock Exchange investigated with success, and on March 5th they had traced the man who called himself du Bourg and, travelling from Dover, had alighted at Cochrane's house. No sooner had they advertised rewards for the discovery and conviction of du Bourg than Cochrane, seeing that his house was mentioned, obtained leave of absence to clear himself. The report of the Committee was ready on March 8th, and by an indiscretion an incorrect version appeared next day in the *Morning Chronicle*. On 11th March, Cochrane sent to the Committee an affidavit, settled by Mr. Gurney, one of the most eminent leaders at the Bar, in which he set forth his knowledge of the affair, and clearly indicated that he believed du Bourg was a man called de Beranger. At this time no one had any reason to connect the two. It is perhaps necessary to explain who de Beranger was. He was a Prussian subject, adjutant of Lord Yarmouth's Volunteer Rifles, who, having fallen into debt, was living in the King's Bench Rules, as prisoners for debt could then do on complying with certain conditions. He was a skilled instructor and had asked Admiral Cochrane for employment. Knowing his ability, the Admiral had favoured the project, but had sailed before anything could be arranged. Apparently, not only had Admiralty sanction to be obtained, but it was necessary to devise some scheme to evade his imprisonment for debt. In this way de Beranger became acquainted with the Cochranes. He does not seem to have been very familiar with Lord Cochrane, but there is no doubt that he constantly met Mr. Cochrane-Johnstone. He wore on the journey a great coat, and the evidence was that he wore a red uniform coat underneath. Lord Yarmouth's men wore green uniforms with scarlet collars and capes.

On 21st February, according to Lord Cochrane's affidavit, de Beranger called. Cochrane was out at a tinsmith's looking after some models of a lamp which he had invented. A letter was brought to him signed in a name which he could not read. He went home and found de Beranger. The latter told him a pitiful story of financial distress, implored employment as instructor of sharpshooters on the flagship, and asked to be allowed to go on board at once. Cochrane represented that the ship was not ready, nor could he allow an alien on board without leave from the Admiralty. De Beranger expressed distress and said that he had come in his uniform of a rifle volunteer officer thinking there could be no obstacle, and he

could not go about in it as it would excite suspicion, inasmuch as a prisoner for debt could not appear like that in the Rules. Cochrane therefore lent him a hat and coat and the uniform was wrapped in a towel. De Beranger then left.

During the day Cochrane's holding in Government stock was sold, but he gave no special order, and consequently it was disposed of immediately the one point was gained. The others, who had given similar orders, were in the City and, getting in touch with the broker, sold at much higher prices.

In consequence of Cochrane's information de Beranger was traced to Sunderland and then to Leith, where he was arrested.

In the meantime the other men who had come to London as French Loyalist officers had been traced and later confessed, but no connection with Cochrane was ever proved. If, as seems to be the case, they were concerned in the same scheme as de Beranger's, the failure to implicate Cochrane with them has some significance.

The Stock Exchange were determined to prosecute all those whom they thought to be implicated, and accordingly at an early date they approached the First Lord of the Admiralty, Lord Melville, and were told that they could consult the Attorney-General. This was equivalent to saying that the Government would prosecute. It does not appear that the Law Officers were, in fact, consulted, and the Stock Exchange bore the expense, but one result of the interview was that their solicitor was changed and in the prosecution they were represented by the Solicitor for the Admiralty. Cochrane always maintained that the prosecution was fomented by Croker, then Secretary to the Admiralty. It was not established, but the two men hated one another and were political opponents.

Accordingly, on April 20th, 1814, the Grand Jury of London found a true bill against de Beranger, Cochrane, Cochrane-Johnstone, Butt, Sandern, McRae, Holloway and Lyte. Of these, Cochrane, Cochrane-Johnstone, Butt and Holloway were "bulling" the Funds. The others were alleged to be the persons employed to carry out the deceit. The indictment contained seven counts for conspiracy to spread false rumours and to defraud. The defendants pleaded Not Guilty, and the indictment was removed into the Court of King's Bench.

The trial began on June 8th, 1814, before Lord Ellenborough, the Chief Justice, and two puisne judges, le Blanc

and Bayley, sitting with a special jury. Mr. Gurney led for the prosecution, though he had settled Cochrane's affidavit. Moreover, he permitted himself to indulge in severe animadversions on that affidavit. The Chief Justice sat until 3 next morning, and resumed on the same day at 10 a.m.

Evidence was called to trace du Bourg from Dover to Green Street, and to establish that he was the caller on Cochrane, and, in fact, was de Beranger. So far as Cochrane was concerned the critical witness was Crane, who said he drove du Bourg from Marsh Gate, Westminster, to Green Street. Du Bourg had a red uniform coat on under his great coat. Now, if that were true, Cochrane's affidavit was perjured. De Beranger, according to him, was dressed in the uniform of Lord Yarmouth's volunteers, and it was said that no change was made or could be made on the way to the house. Though the defence did not know it, Crane was of bad character. He had been guilty of shocking cruelty to horses, and, by the time a new trial was asked for, Cochrane was prepared with affidavits clearly showing, if believed, that Crane was a deliberate perjurer and indeed was the man who drove de Beranger away from, and not to, Cochrane's house. Crane was afterwards transported for theft. The red coat and decorations had been found in the Thames at Wapping. The man who sold them was called, but could not identify de Beranger.

Other evidence was called to prove that de Beranger had boasted that there was a scheme on whereby many thousands were to be made by stock-jobbing. The witness was a colonel imprisoned for debt. He wrote to Cochrane before he volunteered to help the prosecution, and, not receiving a reply as soon as he expected, wrote again to say that, being treated with silent contempt, he would make his information public, and on receiving a civil rejoinder wrote proposing a loan to himself of £3,000. These were put to him. De Beranger said that the conversation deposed to did take place, not as to stock-jobbing but as to a gunpowder invention.

The witness proved that de Beranger's acquaintance with Cochrane was recent and slight, but that Cochrane-Johnstone called almost every day. Evidence was also called to show the profits made. Cochrane made £1,390. His transactions had begun on 14th February and ended on the 21st. Cochrane-Johnstone had made several thousands, Butt and Holloway much less. These four were the speculators, and their transac-



FREDERICK BYWATERS

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MR AND MRS THOMPSON

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tions commenced on 8th February and ended on 21st February. Unlike Cochrane, the three others had been in the City on the day of the boom, and were able to take advantage of the rise during business hours. The other evidence to implicate Cochrane was that two notes for £100, which he had had on 19th February, were changed on 24th February by Butt for one-pound notes. Butt handed them to Cochrane-Johnstone, and when de Beranger was arrested, sixty-seven were traced to him or were in his possession. Other notes formerly in Butt's possession were traced to de Beranger. The explanation of the two one-hundred-pound notes was that Butt had advanced some money to Cochrane on the 15th and these were given to him by Cochrane in repayment. It is certain that Butt and Cochrane-Johnstone had given de Beranger money.

The evidence as to the other two men did not implicate Cochrane.

Serjeant Best led for all the prisoners. So far as Cochrane was concerned the defence rested on his affidavit and upon the evidence of his servants. It was suggested that if he were guilty he would not have allowed de Beranger to call in his absence and be seen by the servants. Rightly or wrongly, the defence decided not to call Cochrane's servants, who saw how de Beranger was dressed. We need not trouble about the evidence for the other defendants.

Lord Ellenborough summed up on the assumption that Cochrane was the chief mover. He suggested that he revealed de Beranger's name only after he thought the latter was safe out of the Kingdom, and that when he called he must have worn the disguise, and therefore it followed that Cochrane gave de Beranger the clothes which enabled him to discard that disguise. "It is for you, gentlemen, to say whether it is possible that he should not know that a man coming so disguised and so habited—if he appeared before him so habited—came upon some dishonest errand; and whether it is to be conceived a person should so present himself to a person who did not know what that dishonest errand was, and that it was the very dishonest errand upon which he had been so recently engaged and which he is found to be executing in the spreading of false intelligence for the purpose of elevating the Funds. If he appeared to Lord Cochrane . . . with that red coat star and order which have been represented to you, he appeared before him rather in the habit of a mountebank than in his

proper uniform of a sharpshooter. This seems wholly inconsistent with the conduct of an innocent man, for if he appeared in such a habit he must have appeared to any rational person fully blazoned in the costume of that or some other crime."

The jury retired, and after several hours' absence convicted all the accused.

On 14th June, Lord Cochrane moved in person for a new trial. It was then supposed that counsel could only be heard if all the parties were present. Cochrane-Johnstone had fled the country. Lord Ellenborough insisted on the observance of this rule. The application failed. On 20th June, Mr. Gurney moved for judgment. Serjeant Best moved in arrest of judgment. He took four points : (1) that the fact of war had not been proved, (2) that the indictment charged no offence, as the raising of the price of Funds was not necessarily a crime, (3) that even if it were the persons defrauded were not specified, (4) that there was since the Union no "Kingdom of England" as stated in the indictment, but only that part of the United Kingdom called England. He appeared only for Butt. Lord Ellenborough observed that it was a new proceeding that Counsel should renounce some of their clients to save the rest. Best answered that Lord Cochrane was not desirous of moving in arrest of judgment, and Cochrane-Johnstone wasn't there. The objections were overruled. Even in the days when technical points were potent weapons the objections were not sound. The most plausible was the last.

Lord Cochrane addressed the Court, hardly in mitigation, as he insisted upon his innocence and proposed to read affidavits in support, but was stopped. The others addressed pleas *ad misericordiam*. Mr. Gurney pressed the case against Cochrane and de Beranger. On 21st June, le Blanc J., as the senior of the two puisne judges, pronounced sentence. Cochrane was fined £1,000 and sentenced to one hour in the pillory and twelve months' imprisonment. He was never pilloried. Sir Francis Burdett announced that if it were done he would stand beside Cochrane, and it was certain that serious disturbances would take place. Cochrane repudiated an attempt to gain remission of the pillory on the ground of his service. If guilty, he said, he deserved it ; if innocent, one penalty could not be inflicted with more justice than another.

Further punishment followed. He was expelled from the

Commons, but immediately re-elected, no one daring to oppose when Sheridan refused to stand. His name was struck off the Navy List and from the roll of the Bath, and his banner was flung out of King Henry VII's Chapel. During this time Cochrane was in prison, perfecting his lamp, which was used in the streets with success. On 6th March, 1815, he escaped and went home, but returned on 20th March, when he went to the Commons intending to move a resolution against Lord Ellenborough. He was seized and taken back to prison. On 20th June his imprisonment ended. He was not entitled to release because his fine was not paid. His health had suffered, and after a time he yielded to persuasion and paid the fine by a £1000 note upon which he endorsed these words: "My health having suffered by long and close confinement, and my oppressors being resolved to deprive me of property or life, I submit to robbery to protect myself from murder in the hope that I shall live to bring the delinquents to justice."

In March, 1816, he moved his resolution against Lord Ellenborough, but only Sir Francis Burdett supported him. He continued his political career, attacking the Government, which probably had some part in his prosecution in May, 1816, for his escape from prison. He was fined £100. He refused to pay, and in November, 1816, he was arrested for non-payment. In a few days he was free, the fine having been paid by a penny subscription among his admirers of the working-classes to raise the amount of the two fines. No less than 2,640,000 contributions were made and the list had to be closed.

During the next two years he continued as an ultra radical, but politics was not his real love. He longed for sea service, and in 1818 he began a new career. He accepted the command of the Chilean Navy, a small, ill-equipped force, against the Spaniards, who were then attempting to crush the rebellion in South America. His exploits there were so marvellous as to *exceed romance*. Some of them may be recalled. The superior Spanish Fleet was based on Valdivia. In 1820, Cochrane entered the harbour, drew the fire of the forts, so as to learn their position, and withdrew with a treasure ship and other prizes. Returning, he used the information thus obtained to capture the forts with all their stores and material. On another occasion he cut out the *Esmeralda* from under the guns of Callao. So great were his successes that the Spanish

Navy disappeared from those waters. In July, 1821, with 600 men, he captured Lima.

In 1823 he entered the service of Brazil, then at war with Portugal. With his flagship and one other warship and a few fire ships he blockaded seventeen warships and seventy transports at Bahia. During the blockade he entered the harbour and so frightened the foe that the whole fleet set sail for Europe, followed by Cochrane, who chased them with two vessels as far as Cape Verde. In July he captured Maranha and then Para. The independence of Brazil was assured, and in 1825 he came home and resigned.

He was at once invited to help the Greeks in their struggle with the Turks. He set to work to build a fleet, but the Foreign Enlistment Acts impeded his efforts and he could not sail until 1827. His attempts to discipline his seamen were not successful, and the Greek Navy did little or nothing. After the battle of Navarino he returned to England. Cochrane's fighting career was over, but he had powerfully aided in the formation of four new countries, Chili, Peru, Brazil and Greece.

He now devoted his life to obtaining redress in his own country. His utmost endeavours failed to move George IV. On the accession of William IV Royal opposition ceased, but the opposition of some members of the Cabinet still foiled his endeavours. His succession to the earldom in 1831 made no difference. At last, on 2nd May, 1832, he was granted a free pardon and re-instated on the Navy List. On 8th May he was promoted to be Rear-Admiral, and thereafter received his due promotion as he gained seniority. He was not employed for a long time, and spent his time and energies in promoting the use of steam power and urging the adoption of the screw propeller. He was also the author of a secret war plan, about which from time to time rumours have spread that it was too horrible to use though its success was inevitable. It was even thought by some that Germans discovered poison gas by stealing the plan.

There was one indignity that he felt severely. He had been expelled with ignominy from the Order of the Bath, but not until 1844 did he gain reinstatement, and even then his banner was not replaced. In 1848 he flew his flags as a British Admiral, being appointed to command the North American Station. It was his last service. After that he wrote his autobiography, and eventually died on 31st October, 1860, and was buried in

Westminster Abbey. Not until his death was his banner replaced in its proper position, but Queen Victoria saw to it that when his body was brought to the Abbey his insignia appeared among those of his fellow knights.

Such was Cochrane, a man of infinite courage, resource and daring ; not given to placate those above him, an unpleasant insubordinate to men who could not emulate his deeds. Having earned fame in the hardest school, he was suddenly, when in the prime of life, snatched with ignominy from his chosen career, prevented from serving his country at a time when the whole energies of the nation were called for. Many men would have sunk under the blow, but he rose superior to his fate, and, commencing anew, earned equal fame in foreign service. To him four nations beside his own owe a debt of gratitude. Then having won a new reputation, and vindicated himself in the eyes of his own race, he resigned his position at home and was awarded the last honour that this realm can bestow—a place among the great dead who lie in the Abbey of Westminster.

Was he guilty ? I cannot—I do not—believe that he was. His whole life negatives the suspicion ; but for suspicion there was ground. If not he, yet his uncle and associates did plan and carry out a nefarious plot. It was inevitable that his conduct should be scrutinised. It is not a matter of surprise if a jury, faced with convincing evidence of a plot, some of which pointed to Cochrane, should have yielded to a common failing of all juries who are apt to condemn without distinguishing between those charged with an offence when they are convinced that that offence has been committed.



# *The Southern Rhodesia Land Case*





## THE SOUTHERN RHODESIA LAND CASE

**N**O apology is needed to excuse my reviving this case. A land case usually has only a legal or antiquarian interest to anyone but the parties concerned. We have, however, a habit of raising large Constitutional questions in the course of a lawsuit and this particular controversy involved matters of the greatest interest to all who take an intelligent interest in the expansion and administration of the Empire.

The dispute was as to the ownership of the unoccupied lands in Southern Rhodesia. These lands consisted of enormous areas which had not been assigned to the natives or granted to any settler or company. The mineral rights clearly belonged to the British South Africa Company, but the value and importance of these districts to Southern Rhodesia lay in the immense possibilities of their agricultural development, a matter which demands the closest attention from those who have the welfare of the Empire at heart. Southern Rhodesia is a country eminently suitable for white people, and consequently is one of the few remaining countries where Europeans may make their home. Who owned these unoccupied lands? There were four points of view that might be adopted, if the solution of despair that there was no owner at all be rejected. The British South Africa Company claimed that these vast areas were their private domain. The natives asserted that they were entitled to the benefit. The white settlers set up the case that, whoever was the owner—the Crown or the Company—the lands were the heritage of the community of Rhodesia, and lastly the Crown contended that, on the true principles of law, these areas belonged to the King, not in his private capacity, but as the head of the State.

In order to solve the question, the history of Southern Rhodesia had to be studied, and incidentally the methods and aims of the concession hunters who forty years ago were contending for the wealth of Africa at the Courts of native potentates were fully revealed. Northern Rhodesia has a

different history and administration, and did not come into the problem under discussion.

As a rule, the settlement by white people of a country already occupied by natives, raises problems of extreme complexity. The relations between settlers and aborigines must be placed on a fair and equitable footing, and this involves the accommodation of native laws and customs to the needs of a society which henceforth will consist in part at least of persons accustomed to a developed system of jurisprudence, the very elements of which are strange and may even be repellent to the native mind.

The problem was complicated by the fact that after 1894 there was no Sovereign to whom could be unhesitatingly attributed the ownership of lands to which no claimant can show a clear title. Rhodesia as a Protectorate was technically not within the Empire, and consequently not part of His Majesty's Dominions. This circumstance had not prevented the Tudors and Stuarts from making the grants which originated so many of our colonies, but there was the difficulty of applying outside H.M.'s Dominions the legal principle that the King is the ultimate owner of all lands within his realms. The fall of Lobengula had led to the total disappearance of the native Sovereigns, so that no easy way out was possible. There was ample room for difference of opinion as to the right solution, but all were agreed that the time had come when it was urgently necessary to arrive at an authoritative settlement.

The way in which the dispute arose was shortly as follows :

In 1890 Southern Rhodesia was under the rule of Lobengula. There were two areas, Matabeleland and Mashonaland. Several native tribes lived a pastoral life on the land. Agriculture was in its early stages, and the pasturing of cattle and hunting formed the avocations of the inhabitants, when they were not engaged in the more congenial pastime of war.

The Matabele were the dominant tribe. They were an offshoot of the Zulu invaders of South Africa, who had conquered the other tribes at a comparatively recent date. The subject tribes, the Mashonas, Makalakas and others, were peaceful folk who lived a troubled existence, harried from time to time by the Matabele. The people lived in *kraals* under *head* chiefs, the more powerful of whom were called *indunas*, and in wartime commanded the *impis*, as the local levies were

termed. The king, who owned the wealth of the natives, that is the cattle, was expected to consult the *indunas* on important matters, but whether he was bound to do so remained uncertain, and it was also quite unsettled whether he was bound to follow their advice. Probably a strong ruler, as Lobengula and his ancestors were, could over-ride all opposition, which indeed was dangerous to any chief who advocated views unacceptable to the king. There were also traces of a national assembly or *pitso*.

There was hardly a trace of land law. Probably it had never occurred to the native mind that land was capable of ownership. Whatever principle may be deduced from the position of the king and his people and their subject tribes and the way in which they lived, is, after all, an effort of the white man's brain.

When the scramble for Africa began, there were three European communities who might covet these lands—the British Empire, Portugal and the Boers of the Transvaal. The ultimate success of this country was due in no small measure to Cecil Rhodes and his colleagues, who, foreseeing the menace to South Africa if the territory of Lobengula fell to others, took effective steps to safeguard Imperial interests.

By 1890, Lobengula's *kraal* was a curious sight. It was beset by a horde of adventurers, some desiring legitimate facilities, many only striving for a concession that could be turned into money. All kinds of inducements that might appeal to the greed or intelligence of the native monarch were being thrown at him, and it may well be imagined that he was bewildered by importunities, and that his awe of the European was considerably abated. The disorders likely to arise from the contentions of the rival suitors at Lobengula's court had already caused grave apprehensions both at the Cape and at home, and much thought had been given to the devising of plans to diminish or prevent them. One scheme, intended both to prevent these scandals and to secure that British influence should be paramount in Lobengula's dominions, was the formation of the British South Africa Company, incorporated in October, 1889, with two main objects: commercial exploitation of the wealth of the territory; and the exercise of effective control over the many whites who had come there and were not under the restraint of native customs.

The problem before the Company was a difficult one. The

country had immensely rich mineral resources which were quite undeveloped and needed European capital and direction if they were to be made available. The competition of concession hunters bade fair to ruin all prospects of proper development for many years, for the native mind was being subjected to temptations which its previous training did not enable it to resist ; the destruction of settled native customs coupled with the presence of many white men, over whom there was no effective control, might easily have led to complete anarchy. The industry imperatively demanded an orderly government. Agricultural development too required the attracting of a class of European with brains and capital ; but this class would never come in sufficient numbers unless assured of adequate protection and security for their lives and their crops and herds. Obviously, some organisation had to come into being with authority and power to control the white population and to deal with Lobengula, so that both the white and the black population could live together under peaceful conditions.

The Company was entrusted with this duty. The system of creating a commercial corporation with administrative powers is familiar to Englishmen. Our Indian Empire was founded by the East India Company, and in more modern times there have been a number of such companies, notably the Royal Niger Company and the British North Borneo Company.

In 1890 the Company began its task.

Leaving on one side the Tati Concessions, there were two important concessions which the Company acquired. One, known as the Rudd Concession, gave the right to prospect for and win the minerals throughout the country. The other, the Lippert Concession, gave the right to grant land in Lobengula's name. It was granted in 1891, and the Company were obliged to acquire it, for if it passed into hostile hands the position of the Company might easily be rendered untenable. The High Commissioner for the Cape, who exercised in South Africa the Crown rights to legislate for Protectorates, issued a proclamation to provide laws for Europeans in the land. Among these provisions were clauses requiring land grants and concessions to Europeans to be approved in a particular manner and making essential for the validity of all concessions that the consent of the Colonial Secretary should be obtained. With the formation of the Company and the Colonial Secretary's approval of that

concessions, the Court of Lobengula ceased to be the happy hunting ground of adventurers, and he naturally soon perceived that his appetite for European commodities, including drink, was in future not easily to be satisfied. No longer could he obtain the things he coveted by putting his mark to a document which, though he did not realise it, expressed in the language sacred to Lincoln's Inn that he had bartered his birth-right for a mess of pottage, that he had granted rights the very possibility of which was beyond his conception.

In 1890 the Company's pioneer force marched to Mashonaland. For 1000 miles the way was impossible for horses and cattle, and four hundred of these miles were through virgin forests. Hardly had they arrived when they were cut off by floods. However, they persevered, and the Company commenced to form settlements and roads and organise a police force and magistracy. The project was on a fair way to success when trouble began with the Matabele.

It must be remembered that, although the Company owed its existence to the Crown, it derived all the rights which it exercised from Lobengula. The Matabele did not consider that the advent of the white settlers had made any difference so far as concerned the subject races or that the towns and farms of the Europeans were exempt from the rights of passage of *impis*. They continued their seasonal raids upon the Mashonas and failed to see how such raids could concern the Europeans, whose servants and neighbours were being hunted, or how there could be any objection to armed hordes stalking through the towns and across their lands, murdering as they went. Objections to these time-honoured customs were to the native mind puerile, and they resented interference; and to Lobengula remonstrances were a flat denial of his kingly power. Friction increased and the Matabele became more and more threatening, while the settlers saw before them the grim prospect of being isolated in the midst of a country laid waste by raiders.

Threats grew to violence, and violence led to war. All efforts to obtain a peaceful solution of the difficulties proved useless. In 1893 the Company's forces, aided by Imperial forces from Bechuanaland, met and defeated Lobengula's *impis* in three pitched battles, and that monarch fled. He was pursued, and one of the columns, the Shangani patrol under Major Wilson, was surrounded by an overwhelming force,

and after a heroic resistance perished to the last man. This was the end of the fighting. The Matabele scattered, and as a nation thenceforth ceased to exist.

Lobengula by the end of 1893 was skulking behind the Shangani. His exact whereabouts could not be ascertained though he was being diligently sought for, but eventually reliable information came that he had died in January, 1894.

His death ended the native monarchy. It is true that he left sons, but no one claimed the vacant throne, and the arrangements made for the future of the country ignored any pretensions that might possibly have been put forward.

The only way in which the Company could thenceforth derive any rights over the territory was by way of grant or permission from the British Crown. An Order in Council of 1894 set up an administration. The Government was vested in an Administrator and a Council of four members. These officials were appointed by the Company, which was also charged with the duty of providing for justice and police. A land commission was appointed to provide land for the natives while reserving the Company's mineral rights. A system of land registration was also put into force and in the Ordinance the unoccupied lands were termed the Company's lands.

The administration of the country was therefore entrusted to the Company, and, as the revenues were not sufficient to meet expenditure, the annual deficits were made good by the Company, so that the commercial profits were eaten up and no dividends paid. At first the accounts made no distinction between administration and commerce, but after 1896 the distinction was clearly shown, in accordance with the requirements of the Colonial Secretary. Land receipts were carried to the administration account. The Company had a dual function, and it was not always easy in the daily routine to make a distinction between its governing and its commercial activities.

In 1896 an abortive native rising in Mashonaland was put down, and shortly afterwards the country had so far progressed that a Legislative Council was set up consisting of elected members as well as others nominated by the Company. Almost immediately the Company's land development schemes came into question. The vast spaces were suitable for the raising of cattle and crops, and outside markets became

available with the improvements of communication, notably the railway which the far-seeing Cecil Rhodes planned to extend from the Cape to Cairo. Immigrants were attracted, and land began to have a considerable and growing value. Besides the land granted to these settlers, the Company set apart large areas for cattle farms for its own benefit. When its rights to the unoccupied areas came into question, the Company began to consider protecting its proprietary rights, and as a measure of precaution transferred its land revenues to the commercial account. It was abundantly apparent to all that responsible government would soon be conceded, and the Company was as anxious to preserve the return from land development for its shareholders as the elected members were to secure that the land should belong to the nascent state. The Company had spent immense sums in rendering the country available for European settlement; its expenditure had never produced any return to the shareholders for the immense sums they had invested in the Company, and not unnaturally the Directors considered that the undeveloped lands were part of the Company's assets.

The dispute grew into a matter of the gravest constitutional importance to Rhodesia, but fortunately there is a means of settling such questions authoritatively and without heat. The King is empowered by a Statute of 1833 to refer a matter of this kind to the Judicial Committee of the Privy Council for its opinion, and in 1914, at the request of the Legislative Council, the reference was made. Unfortunately, owing to the War, it was found impossible to fix the hearing before 1918, but in April of that year the arguments on behalf of all the persons interested were presented during a ten days' hearing.

There could be neither plaintiff nor defendant, but by mutual agreement counsel for the Company began, then came the case for the natives, thirdly the contentions of the elected members of the Legislative Council, and lastly the Crown, for whom I held the leading brief with the Solicitor-General (now Lord Hewart, the Lord Chief Justice), Mr. (now Sir Thomas) Cunliffe, K.C., and Mr. (now Mr. Justice) Branson.

The Company endeavoured indeed to suggest that the Matabele campaign of 1893 did not result in a conquest, but this contention could not succeed. Before the hostilities began Lobengula was the acknowledged Sovereign. He was



overcome and immediately afterwards the Company assumed the sovereignty.

The Company's sheet anchor was the Lippert Concession, but the difficulty that proved fatal to that grant was that it had never been acted upon nor did it give the concessionaire any of the rights of ownership. Moreover, the stipulated payments had never been made, nor had the conditions been fulfilled. Substantially, then, the Company relied upon undisputed possession. Its title could not be put upon conquest, as acquisitions made in that way can only be made on behalf of the Crown. The Company's case was therefore vested upon a plea of acquiescence on the part of the Sovereign. No document could be adduced to show an express grant, and if the Crown did acquiesce, then it acquiesced in the Company being there as the government as well as a commercial concern; so far as any facts could be shown telling against the Crown's case, they were consistent with the Company's position as the ruling authority.

The natives had a weak case. Not only were they unrepresentative of the dominant Matabele, but their claim was inconsistent not only with the legality of all the land settlement that had taken place under legislative sanction, but also with European settlement altogether. Many changes had taken place since 1893. The Matabele had ceased to exist as a tribe. The subject tribes had escaped from thralldom and immigration, and emigration had altered the black population almost as much as they had the white.

The elected members' case was consistent with the Constitutional practice, but they were not in a position to show that there had been any limitations of the Crown's rights. As a result, the Judicial Committee acceded to our argument, that the only satisfactory legal solution, looking at the question both historically and practically, was to hold that the unoccupied lands of Rhodesia were vested in the Crown. We therefore succeeded in preserving for the community of Rhodesia these vast areas with their promise of untold wealth. Existing holdings of settlers, of natives and of the Company were not affected.

Such a decision of itself would have worked injustice to the Company, which had spent enormous sums in preserving Rhodesia for the Empire and in developing its communications and resources. I had conceded in the course of the

argument that the Company was entitled to reasonable compensation and the Privy Council so held. This was assessed by a Commission, presided over by Lord Cave, which went out to Rhodesia and examined the facts on the spot. The sum awarded was charged on the local revenues. Southern Rhodesia now possesses a vast estate, which is proving, and will in time increasingly prove, an immense national asset.

And so this case, too, decided in an obscure little room in Downing Street, made history.



*The Plot to Murder Mr. Lloyd George*



## THE PLOT TO MURDER MR. LLOYD GEORGE

PUBLIC memory is notoriously short, and probably many have now forgotten the thrill of horror and surprise that was caused in the first days of 1917 by the news of the arrest of several persons for plotting the death of the Prime Minister and other Cabinet Ministers. It is true that there were Communist tendencies in some centres, and also that a number of individuals who objected to being called to their duty in the Army were resisting the Military Services Acts, but the nation as a whole was so determined to persevere to the bitter end, and so confident in the driving power of Mr. Lloyd George, that it was difficult to realise that such a plot could really have been seriously contemplated, especially when it was found that the conspirators had no encouragement or assistance from the enemy. Indeed, I believe that these misguided individuals never stopped to consider what effect their success would have had in encouraging the Germans.

Mr. Lloyd George is the last person to think that he alone stood between this country and defeat, but no one who realises his courage and determination and the power he had of calling forth from the nation the utmost effort, can fail to perceive how great and irreparable a disaster his death at that time would have been to the cause of the Allies.

What the conspirators thought they would secure by murdering him, if indeed they thought at all, was never made clear. They hated him and all his works, and it may be that his death was all they wanted. *Finis coronat opus*. They were not persons accustomed to reasoning, and the most probable explanation is that they hoped that his successor would be terrified into abandoning conscription, though how anyone out of a lunatic asylum could have believed that such a result could be so achieved passes comprehension. Yet none of these persons was insane.

The discovery of the plot came about by accident. There was a certain amount of Communist activity upon which the

Government was bound to keep a wary eye, and many of that way of thinking had taken, or attempted to take, advantage of the exemption from military service conferred upon "conscientious objectors." I do not wish to cast aspersions upon those who honestly and conscientiously believed that service in the Army was a sin. Parliament had recognised that there were such people and that they had a claim to consideration. Many of them recognised that objection to warfare was not incompatible with noble service in succouring those who had fallen victims to the ravages of war and with preventing or mitigating the avoidable evils that follow upon hostilities. Nevertheless, "conscientious objectors" were subjected to great and not unnatural opprobrium, and this was intensified by the fact that others attempted, often with success, to take advantage of the exemption, though their objection was rather a matter of politics or spleen than of conscience. Such persons only objected to war when it was waged for a purpose other than the furtherance of their own perverse and peculiar ideas of politics. Many of them were under detention, having given in certain cases unmistakable proof that they could nerve themselves to fight not to fight; others were at liberty, but a close watch was kept upon them. The curious masking of Communism under the guise of Pacifism made the manifestation of the proceedings extremely puzzling, and necessitated a close watch being kept upon the individuals concerned.

Towards the end of 1916, Alec Gordon, an inquiry agent of the Government employed on this work, was in Derby. He was, for the purpose of the duty entrusted to him, posing as a conscientious objector "on the run," and in that capacity made the acquaintance of Mrs. Wheeldon, a widow who carried on business as a second-hand clothes dealer. Mrs. Wheeldon had several children. One son was a conscientious objector; a daughter, Hetty, aged twenty-seven, who lived with her, was a teacher at one of the local schools; and another younger daughter, Winnie, was married to a man named Alfred George Mason, with whom she lived at Southampton. Mason was exempt from service, for he was in an employment of national importance, owing to the fact that he had a knowledge of drugs and was an expert in chemistry. The whole family shared the same political views.

Mrs. Wheeldon was apparently on the look-out for a suitable instrument for some service at which she darkly hinted, and

her approaches to Gordon led him to think that something sinister was being planned. He called in his immediate superior, Herbert Booth, to take over the investigation, for he was getting beyond his depth. Booth was well known in the Temple as clerk to the late Mr. E. D. Purcell, a barrister who in his day had an extensive criminal practice, and therefore Booth knew most of the tricks and turns of those who pit themselves against the law. After consulting his superior, Booth went to Derby. On his arrival, on 27th December, 1916, he posed as a more suitable desperado than Gordon, who introduced him to the Wheeldons as a deserter in imminent danger of arrest and consequent execution and as a member of the International Workers of the World, a curious organisation of Communistic tendencies, which would now be described with sufficient accuracy as Bolshevik. Its activities during the War were confined to quarters where any advantage they gained would assist the Germans.

The newcomer was received by the Wheeldons with open arms. He was so apt to their purposes that they accepted him without inquiry. They were persons of some education but of little refinement, and liable to act on impulse rather than on the solid ground of reflection and moral principles. Such people are peculiarly liable to the pitfall of talking themselves into a belief that whatever they think fit to do is for some indefinite reason entirely justifiable and will in some undefinable way lead to the advent of some vague Millennium. Mother and daughter both claimed to have been Suffragettes of a very extreme and unusual type; during the War they had become pacifists of the familiar belligerent stamp. As Mrs. Wheeldon in her obscure abode in Derby was of a different opinion from Mr. Lloyd George, it was obvious to her, for reasons which she never did and probably never could give in intelligible form, that he should be removed, and with him, of course, the Labour Ministers, who, having the misfortune to assist their country, were naturally "traitors to the cause" which for the moment had captured the support of these ladies.

They had from time to time given aid and comfort to certain individuals who, having failed to convince the Tribunals of their conscience, were seeking safety in flight. Gordon, so they thought, was one of these and Booth even more desirable, for his offence was much graver. Any person



who came to them as a fugitive from justice because he desired not to do his duty to his country was sure of a welcome in at least one English home.

Mrs. Wheeldon did not delay to confide in Booth. She expressed her views in terms more remarkable for their blasphemous indecency than for any other quality. Her daughter faithfully copied this language, though she should have known better, for at her school she was responsible for the religious education of a class of small boys entrusted to her care. On the first evening Booth heard enough to justify the obtaining of an order to examine the correspondence of the pair, who possessed neither the information nor the opportunity to acquire the materials necessary for the accomplishment of their ends. They possessed in Winnie's husband an accomplice who had both the knowledge to instruct and access to the materials which they desired to use.

By this means it was found that Mrs. Wheeldon was corresponding with Mr. and Mrs. Mason in a code based on the sentence, "We'll hang Lloyd George on a sour apple tree." It was an easy cypher and was at once unravelled by our experts, who were set much more difficult problems by the Germans. Evidence was thus obtained that poison was urgently desired for some unlawful purpose, and that Mason was expected to provide it.

The parcel tarried, but Mrs. Wheeldon did not slumber. She became reminiscent and entertained Booth with an account of the burning of Breadnall Church, which had been destroyed some little time before from a cause which had never been satisfactorily established. She remarked: "We were nearly copped, but we — well beat them." It is by no means certain that the church was deliberately set on fire.

Meanwhile practical proposals were being discussed. The third meeting was on 1st January, 1917, when Mrs. Wheeldon recalled an expenditure of £300 by Suffragettes designed to poison Mr. Lloyd George by means of a nail in his boot, and also a proposal of hers to send to Mr. McKenna a skull with a poisoned needle, which had been rejected because the wrong person might be killed. It is only fair to add that these particular Suffragettes were never identified, and after the trial Mrs. Pankhurst was allowed by the Judge to repudiate the suggestion that the Suffragettes had ever contemplated murder. Mrs. Wheeldon when giving evidence denied that

any of the conversations relating to her activities as a Suffragette had ever taken place.

The parcel still delayed, and this caused acute anxiety, and no wonder, for, as Mrs. Wheeldon remarked: "It has all the incriminating evidence in it." She, however, did not waste her time, for she gave advice to Booth, to whom she had by now revealed the names of the intended victims, recommending Walton Heath as the best place for him "to get Lloyd George with an air-gun" and offering to procure him microbes for subtler forms of murder.

At last, on 4th January, 1917, the parcel arrived. Mason had been more subtle in covering his tracks than his mother-in-law thought, for he addressed it to a relative of the Wheeldons living in Derby, who had no idea of its contents, and no sympathy with the Wheeldons' views. The parcel contained four phials and a paper of directions for use. One phial contained enough strychnine to murder fifteen people; another contained a solution of strychnine; a third phial contained a substance which resembled curare, the Indian arrow poison. Curare, unlike strychnine, can be swallowed with impunity, but if introduced into a wound, or even an abrasion, it causes inevitable death. A bullet steeped in this preparation and fired from an air-gun would kill anyone who was struck. Now Mason had taken elaborate notes about curare and was known to have had some in his possession.

Things had gone far enough. The design had been made clear. Some man was to be found to administer poison—by whatever method he might find convenient. The victim had been named, and other victims had been chosen to follow him. The poison had been procured. All that remained was to carry out the project, but Booth, of course, was not the man they thought. The authorities were in possession of the evidence. I advised a prosecution. It is always a matter of grave anxiety for an Attorney-General who is called upon to decide whether a prosecution shall be instituted, especially when the offence in question is closely connected with politics. To commence a prosecution and then withdraw it inevitably causes a loss of prestige, which may have disastrous consequences. To remain inactive while crime is being planned, and may at any moment be committed, is impossible. To risk a prosecution failing ignominiously is one which a Law Officer ought not to run. This plot at first sight seemed too

melodramatic to be really serious, but there is no doubt that in this case the conspirators were in earnest and might at any moment find a man who was willing to carry out the plan. Then it would probably be too late to prevent the consequences.

There was nearly a hitch over the arrests. Someone had informed Mason that their letters were opened, but luckily, instead of taking to flight, he cycled to Derby to warn his wife's relations. Obviously he thought the puerile code was not easy to read. However that may be, all four were arrested, taken before Justices and committed for trial. It was originally intended to try the prisoners at Assizes, but it was thought to be fairer to them to bring them to London.

On 6th March, 1917, the day appointed by Mr. Justice Low, who was the presiding Judge, the four were arraigned at the Old Bailey on charges of conspiring to murder and of inciting Booth to commit murder. They all pleaded Not Guilty and the trial began. It lasted five days, because on the third day an unfortunate juror was found to be seriously ill and proceedings had to be begun all over again.

I led Mr. Hugo Young, K.C., and Mr. (now Sir Archibald) Bodkin, and Mr. (now Sir Henry) Maddocks for the prosecution. Mr. Riza defended all four.

The defence was ingenious. It was suggested that Gordon and Booth had made up the story and fastened it upon the defendants, whose loudly proclaimed dislike of Mr. Lloyd George made the accusation plausible. What they really desired, it was suggested, was to rescue conscientious objectors under detention, and the poison was merely for the police dogs who guarded these gentlemen.

A great deal of capital was sought to be made out of the fact that Gordon was not called. He was not a material witness, as he dropped out at the very beginning. The extraordinary suggestion was made that he was Steinie Morrison, a man who was then serving a life sentence for murder. What good it could have done the prisoners if Gordon had been called and admitted that he was Morrison (though in fact he was not), one cannot imagine.

The difficulty of the defence was twofold. First, there never were any dogs to poison. Conclusive evidence was called on this point. Moreover the prisoners could not have thought for a moment that dogs were so employed. They were in close touch with conscientious objectors both at large

and under detention, and it would have been the easiest thing in the world for them to have acquired accurate knowledge of the guard over those in prison : indeed, if that had been the plan, such inquiries must have been made, and witnesses would have been available who could have proved that they had told the Wheeldons of the dogs. Needless to say, no attempt was made to call evidence that they ever were informed of these non-existent dogs. Secondly, even if dogs had been so employed, some of the poisons could never have been intended for use upon them, for these poisons would be useless for putting a dog out of the way quickly and without noise. But the directions for use, meaningless for the suggested purpose, were extremely apt if the murder of a human being were the object. Once the defendants' explanations were rejected, the only possible defence was that the Crown witness, Booth, could not be believed on his oath. I omit the particular case of Hetty, who was only proved to have posted letters (but not proved beyond doubt to have known of their contents) and to have taken part in the conversations at Mrs. Wheeldon's salon. Booth was strenuously cross-examined, both to destroy his credit—for it was suggested that his previous employment as a barrister's clerk had made him an expert in concocting evidence, a suggestion obviously ludicrous—and also to show that he was committing perjury. He had no difficulty in meeting the cross-examination.

The jury believed the Crown witnesses and convicted Mrs. Wheeldon and the Masons, but acquitted Hetty Wheeldon, who died not long since. Mrs. Wheeldon was sentenced to ten years' penal servitude, Mason to seven and his wife to five.

It is only due to the prisoners to say expressly that there was no trace of their ever having had any communication with the enemy, who indeed did not suborn assassination. They acted as a result of impulses due to ill-considered notions of what ought or ought not to be done, and had no intention to assist the enemy. What they wanted was to inflict punishment upon people who would not do what the prisoners thought they ought to do, though why they should constitute themselves a tribunal to return a verdict in the teeth of the feeling of the nation, or deem themselves competent to impose and carry out a sentence of death upon persons who had never even heard of them and were merely carrying out a duty

imperatively cast upon them, is a mystery which is probably best left to the psychiatrists.

The trial is noteworthy from the fact that it was the only instance of its kind during the War. It served to emphasise the unanimity of the nation to prosecute the War with the utmost vigour to its successful conclusion.

*The Frauds on the Bank of Liverpool*



## THE FRAUDS ON THE BANK OF LIVERPOOL

THE great criminal trial of 1902 was that of Goudie and a number of other men for extensive frauds upon the Bank of Liverpool. The story is a remarkable one, for Goudie, who was a bank clerk, was, when the frauds commenced, one of that unfortunate class of men who had been unable to withstand temptation, and had committed embezzlement. His crime at first in no way differed from that of many others who have found themselves in like case. What made the trial so interesting was that he was found out, not by his employers, but by two unscrupulous persons who terrified him into more extensive depredations to satisfy their greed ; then other men, abler and more greedy, had ferreted out the cause of the sudden access of wealth of the former two, and themselves fastened on to the unfortunate man, who was driven by two sets of merciless taskmasters, acting independently, into committing for their benefit, frauds on a scale hitherto unknown and deemed impossible. All his skill and ingenuity in the committing and cloaking of his crime were exercised to the full, not for his own benefit, but for that of his blackmailers, who thought that they had so arranged matters that, when the discovery inevitably came, they would be able to escape all consequences, leaving their unfortunate tool to his inevitable fate, so artfully did they believe they had planned and carried out their nefarious schemes.

I propose in the following pages to tell the story of these colossal frauds and to show how these bloodsuckers failed in their calculations and shared their victim's fate.

Although the actual frauds were committed at Liverpool, the scheming was done for the most part in London, and thus it came about when others were arrested and charged with Goudie, the trial was appointed to take place, not on circuit at Liverpool, but at the Old Bailey.

The case marked an important development in my career. I was established in practice at Liverpool, but naturally had then but few opportunities of appearing "off my circuit" and



becoming known to a wider clientele. I had been retained for Goudie, and at the trial I appeared in London in competition with the established leaders of the Bar in a case which riveted the attention of the whole country. It was such a chance as may make or mar a man.

To return to the story :

On 21st November, 1901, there was a scene of great excitement and grave anxiety at the head office of the Bank of Liverpool. Facts had come to light which seemed to point inevitably to defalcations on a large scale which would involve the Bank in heavy losses. The accounts had to be investigated, and it was found that the ledgers in which those accounts were written were in the charge of Thomas Peterson Goudie. He was invited into the office to give an explanation. He had none. He broke down and confessed to a series of forgeries and embezzlements to the extent of some £160,000. As his story was being told, some point was raised which gave him the opportunity of going to his place in the office to fetch the books in his charge. He took advantage of his momentary absence to abscond from the building. For some days he was missing, searched for high and low. Then he was found in hiding near Liverpool in a state of abject destitution. Whoever had profited, he had not, for he was penniless. He was arrested, and while in custody made statements which completed his confession, and led to the arrest of three of those who had driven him on. The delay had, however, enabled two others to abscond, and they were never brought to justice.

Until the fatal day, so long dreaded by him, when he was called into the office, he had never come under any suspicion. He was trusted by the Bank, and seemed to have deservedly earned the confidence reposed in him during his eight years' service. He was then twenty-nine years of age, was a native of Shetland and well educated. To all appearances he was a decent, hard-working young man of no particular note. He had no marked peculiarities or expensive tastes, and lived so simply and quietly that his board and lodging cost him no more than a pound a week. He had attained a position of responsibility for which he received a salary of £3 a week. In those days, bank clerks received comparatively small pay and only achieved promotion slowly and by degrees. They had, of course, a secured position, and the prospect of a pension.

Such a man, whose modest budget appeared to show a



CHARLES I AND BISHOP JUXON  
on the morning of the King's Execution  
(After the painting by S Blackburn )

*See page 355*



steady surplus, should have been saving money. Yet he was penniless. He ought to have had no motive for committing his crimes. He had no obvious extravagance, was not given to folly, and probably was the last of their employees of whom the Bank would have entertained suspicions. Yet he had a secret vice, one which no bank can afford to countenance. He had taken to betting on horse races. As so often happens, he lost, and lost so heavily that he was unable to meet his obligations to the bookmakers. About 1898 he was faced with exposure and consequent dismissal unless he made due payment of £100. To avoid the consequences of his foolishness, which he had brought upon himself, he yielded to the temptation of stealing from the Bank. He forged a cheque for £100, and, unfortunately for himself, escaped detection at the time. But there was the shortage, and sooner or later it had to be made up. Like so many weaklings, he increased his betting, so as to free himself from the toils. He lost again, and more and more money had to be found. Once he had succumbed to temptation, he yielded more readily, and so he went on, embezzling more money, until such time as the sudden turn of fortune's wheel would enable him to replace the money and again become an honest man. Luck did not change, and perforce he continued his evil courses.

From 1898 to 1901 is a long period, and it may be asked how it came about that, with the constant checking and audit that goes on in a bank, his misdeeds, trifling only in comparison with what followed, remained unobserved.

As might have been expected, the Bank had an elaborate system, whereby it was thought that mistakes and defalcations could readily be detected. Not only was there a weekly system of checking, in addition to the ordinary supervision, but also frequent audits. Yet Goudie defeated the system by a very simple method. As ledger clerk, he was responsible for posting into the ledgers the accounts of customers whose surnames began with the letter H to K. One of the customers, Mr. Hudson, of Hudson's soap, had an important account, through which large sums of money were continually passing. At that time when a cheque was paid an entry was made in a journal, and the journal and the cheque were taken to the ledger clerk concerned, who marked the journal, took the cheque, which went on to other officials, and made the necessary entries in the ledger.

Cheques, of course, are usually issued in books with serial numbers, and Goudie had no access to customers' cheque books. He opened an account at the Bank, and thus got the right to obtain cheques without arousing any suspicion. He bought cheque forms at the counter like any other customer. He filled up a cheque, forged Mr. Hudson's name and the cheque was duly presented and paid. To deceive a bank cashier implies that he had great skill as a forger. Of course, if that cheque went through the ordinary routine, the fraud would not remain undiscovered for a single day. It was duly entered in the journal, and with that book it in due course came into Goudie's hands. Then he destroyed the cheque, and marked the journal as if the ledger had been duly posted, but carefully omitted to make any entry in the ledger, where Mr. Hudson's account always showed that customer's actual drawings and payments in.

Obviously, if anyone checked the ledger with the journal, the discrepancy thus created would come to light. There were three ways in which this might happen. First, an occasion might by chance arise which would lead to a casual checking of the items. Goudie never devised any way of avoiding this flaw in his scheme. The other two ways were inevitable. There was a weekly sheet and the recurrent audit. These he did effectually guard against by a system of false entries, which it is perhaps as well not to explain in detail. He could do this the more easily for the reason that it was part of his duty to assist the auditors, an arrangement which should not have been made. It may be well to add that the system then in force was changed by the Bank.

So far Goudie's offence resembled that of most dishonest employees. He had taken the Bank's money and had guarded himself from discovery in the usual investigation, though, like all others, he remained at the mercy of chance. Even giving him due credit for his misguided skill and ingenuity, it is nevertheless remarkable that he continued so long without being found out.

After a time, however, some members of the bookmaking fraternity became aware of his identity. As bank clerks are not allowed to bet, he was peculiarly liable to blackmail, and two men named Kelly and Stiles took advantage of this to involve him deeper and deeper, but with this difference, that he had to commit the frauds for their benefit, not his own. He

was compelled to make larger and larger bets, which he was never allowed to win, and his defalcations rapidly grew larger. These two men were making too good a thing of it for the matter to escape the attention of others of a like occupation. They were growing wealthy and scattering money about, though the source of their means was not obvious. How did they get it? There seems to have been a system of intelligence whereby men of bad character engaged in betting on horse races got to know of one another's doings, and another set of men named Burge, Mances and Marks set to work to find the hidden source of wealth. They soon discovered and thus became aware of the possibilities of enormous gains to be obtained by terrorising Goudie.

In October, 1901, the second gang got to work. They came upon the scene on the 18th of that month, and so skilful and greedy were they that within three weeks £91,000 was extracted from the coffers of the Bank.

Whether their gains would have been larger had they been less grasping may be a tempting speculation; but at all events the scale on which the defalcations were conducted was stupendous and could not be expected to last long without discovery. On 23rd October, 1901, a forged cheque was cashed for £5,000. On the 28th another for £9,000. On the following day there were two, one for £9,000 and one for £7,000, and on 6th November there was a fifth cheque for £30,000, and on the 12th the sixth and last for £31,000.

Nine days later the discovery was made, and there was a hue and cry after Goudie and those who had battered upon him. Mances and Marks disappeared and were never charged, but Goudie, Kelly, Stiles and Burge were arrested and committed for trial, which was fixed for 17th February, 1902.

The presiding judge was Mr. Justice Bigham, afterwards President of the Divorce Court, who is now living in retirement, a most distinguished lawyer, afterwards raised to the peerage as Viscount Mersey.

Three counsel appeared to prosecute for the Bank. The late Mr. (afterwards Sir Charles) Gill, K.C., led Mr. Charles Matthews and Mr. Graham Campbell, who were both well-known members of the Criminal Bar. Mr. Matthews was knighted when King Edward opened the new Central Criminal Court, and after a noteworthy career at the Bar became Director of Public Prosecutions, in which capacity he

instructed me on many occasions when I was a Law Officer. He was made a baronet for his public services, and was a man of singular charm and versatility. Mr. Graham Campbell is now one of the magistrates at Bow Street.

Kelly was defended by Mr. Rufus Isaacs, K.C. (afterwards Lord Chief Justice, Viceroy of India, and now Marquess of Reading), and the late Mr. S. W. Lambert; Stiles retained Mr. (later Sir Edward) Marshall Hall, K.C., and Mr. Moyses; Burge, Mr. Avory, K.C. (now Mr. Justice Avory), and Mr. Biron, who, as Sir Charles Biron, is well known as the Chief Magistrate of London. I led Mr. Hemmeide for Goudie.

There were a large number of charges, for Goudie's offences had been numerous. He was charged by himself with all of those which the prosecution had elected to rely upon. With Kelly and Stiles he was jointly charged with the forgeries which concerned them, and they were charged with conspiring together. With Burge he was similarly indicted for the group of offences relating to them.

He had no possible defence. The evidence against him was conclusive, and, moreover, he had made statements admitting his guilt. He therefore bowed to the inevitable and pleaded Guilty.

Before he could learn his fate, he had a final ordeal. Mr. Gill had very properly decided to call him as a witness against the others. So soon as he had pleaded Guilty, and the others had pleaded Not Guilty, he was available to give evidence.

Burge's case was taken first, and soon Goudie was called into the witness-box. There he was subjected to a searching cross-examination by the acute and experienced Mr. Avory, at the height of his powers. But notwithstanding all that Counsel could do, Goudie stood the test. The jury accepted the evidence given by him and the other witnesses, and Burge was convicted. A curious feature of this case, of which Mr. Avory made the most, was that up to the time of Burge's arrest Goudie had never even seen him. The men who had applied the pressure were the two who were not forthcoming. The prosecution alleged that in this group of offences, whereby the Bank had been defrauded of a total of £91,000, Burge had received £38,500, Manes £36,750 and Marks £15,000. This only leaves a balance of £750 for Goudie, who got no benefit, even from the money he was allowed to retain, as he lost it in the same way as he had lost so much before.

Burge's trial had lasted for three days, and Counsel who represented Kelly and Stiles had been watching it carefully. They were men of the greatest experience and realised that if Goudie could survive cross-examination at the hands of Mr. Avory there was no chance for their clients. Accordingly, when the remaining prisoners were put up for trial, they withdrew their pleas. They admitted their guilt, and nothing remained but to sentence them.

It is the practice of English judges to allow Counsel for convicted prisoners an opportunity of addressing him in mitigation of punishment. This was the only way in which I could do anything for my client. The trial had begun on Tuesday, 17th February, 1902, and it was not until Saturday, the 22nd, that the final stages were reached. Speeches were made on behalf of all the four. I had been waiting all this time, during which the details of Goudie's crime had been discussed and re-discussed, without a chance of a word being put in for him. Naturally enough, after all that time the quick-witted Judge had formed his own judgment, and if it were unfavourable there was little or no chance of bringing him round.

In any event, whatever might be said, Goudie's offence was deliberate and long-continued. Before ever the others had fastened upon him he had betrayed his trust. There was no hope of a light sentence. Nevertheless there was something to be said for him. But for the others, he would have been a criminal of a very ordinary type. It was as a tool in their hands and for their benefit that he had committed the series of crimes which had made the total loss so great. But for them, his crime would not have been so serious; most of his offences were committed under their compulsion, in abject fear of exposure. With all the force at my command I urged upon the Judge the factors which told for leniency. It is not for me to comment upon my speech, but I may perhaps be permitted to recall a remark made by a member of the Old Bailey Bar, who had come to see the closing scenes of the trial, that unless that Bar did away with me it was all up with them, for I would get their work.

Mr. Justice Bigham was unmoved. He had made up his mind to make an example of the prisoners. He sentenced Goudie to ten years' penal servitude and the others to long periods of penal servitude. Goudie died in gaol. The others



have long since served their time, and one may hope that they have retrieved their position and characters. For this reason, as they have expiated their offences, I have omitted to give details of their careers which might identify them.

The Judge was careful to point out that no blame attached to the Bank, which was a heavy loser, for it had to make good all the money that could not be recovered from the prisoners.

The fate of Goudie was hard, yet it must be remembered that before he fell into the clutches of the others he had shown himself to be an able and deliberate criminal, and, but for his own previous misconduct, would never have been subjected to the terror and degradation into which they forced him.

# *Fire and Earthquake in Jamaica*



## FIRE AND EARTHQUAKE IN JAMAICA

**I**N the course of 1908, soon after I had taken silk, I was engaged on a most important appeal to the Privy Council. Following upon an earthquake, the business quarter of Kingstown, the chief town of Jamaica, had been destroyed by fire. The insurance policies, as is usual in countries liable to earthquakes, contained a clause relieving the companies from liability for fire due to earthquake or similar convulsions of Nature.

If the companies were right in their contention that the fire, which caused the greater part of the loss, was due to the earthquake, then the sufferers would have to bear the whole of the loss—a burden which would have caused a most serious financial crisis. On the other hand, if the fire was not so caused and the companies were bound to pay the amounts secured by the policies which they had issued, they would be severely hit, for the damage done amounted to many thousands of pounds.

As so many were affected, there were a large number of actions, some commenced in England, for most of the companies affected were English companies, but the majority were proceedings commenced and tried locally. In any case, the evidence had to be taken in Jamaica, and a number of English barristers were retained to conduct the proceedings in Jamaica, where they were entertained with that hospitality for which the West Indies are so honourably renowned. I had been asked to form one of the party, but a multiplicity of professional engagements here forced me to decline.

By arrangement a number of cases were taken as test cases. In the appeal I am now mentioning, some premises in Harbour Street, Kingstown, had been burned down, though they had escaped serious damage in the earthquake. The trial was before judge and jury in Jamaica, and after a protracted hearing, during which many witnesses were called, the verdict was in favour of the policy holders. An appeal to the local

Court of Appeal had been brought, but failed, and the companies concerned appealed to the Privy Council.

That appeal was heard in London, and I was able to accept a brief with other counsel for the policy holders. The main question was whether the verdict could be justified by the evidence given. The whole of the story was discussed at great length.

It is impossible to set out at length the volumes of evidence that were before the Court ; but, shortly the story disclosed was that which follows :

Monday the 14th January, 1907, at Kingstown in Jamaica was a delightful day. The sun shone in a cloudless blue sky and light airs tempered its rays. In the afternoon, the heat increased : most people rested in their houses, while those whose business or duty called them out kept to the shady side of the street.

Alongside the wharf lay moored the s.s. *Port Kingston*. On board, there was nothing to do, and Mr. Little, the chief officer, leaned on the ship's rail contemplating the quiet town. About half-past three he noticed near the parish church that a column of smoke had begun to rise. If, as he at once decided, this meant that a house was on fire, he had to take steps to safeguard the ship, for houses there contain much wood, which in the tropics burns even more readily than here, and what wind there was set towards the wharf. He called the third officer to him to discuss the matter, but before they could take action, the town was shattered by a violent earthquake. Many houses were down. A thick cloud of dust rose and hung overhead like a black fog. As the cloud dispersed, Mr. Little saw again the column of smoke, thicker, blacker and taller than before. As he and his men set to work to preserve their craft other fires broke out. The business quarter of Kingstown had caught alight and by next day the heart of the town was destroyed by fire.

The shock that caused the damage occurred at 3.35 p.m. During the night there were other shocks, followed next day by a second very severe convulsion, but the damage that was done was mostly caused by the first shock of all.

Nothing is so well known as the terror caused by earthquakes. In all misfortunes we rely upon the solid earth, but if that moves, our whole confidence is dissipated and panic treads fast on the heels of fear. Yet the shock itself generally

causes little damage. The greatest have passed unnoticed save by nomads in the wide deserts or by some ship at sea and by scientists watching their instruments. It is when a town is shaken and its buildings fall that an earthquake becomes known to fame, and even then it usually owes its sinister reputation to some supervening calamity to which it has given rise rather than to the direct and obvious damage. Thus, at Lisbon the fame of the earthquake rests upon the tidal wave. At Tokyo, upon the conflagration which slew its thousands when the earthquake was content with hundreds. So, too, at Kingstown, the shock caused many houses to fall. The fire destroyed a whole quarter. How many were the victims will never be known.

Nothing is more difficult than to obtain a clear statement of events from eye-witnesses of such a disaster. In the first place the cataclysm comes without warning, and the sufferers are naturally bewildered. As soon as they have realised what has happened, they obey the imperative call for rescue and salvage. Not until a long time has elapsed can they spare time to arrange their thoughts and, as no one can see the events as a whole, the history of the calamity must be pieced together from numerous and often inconsistent narratives.

What was made clear was that after the earthquake, first one, then two and then three columns of smoke arose, spread and joined in one mass of flames. The companies, not unnaturally, said that the town was safe before the shock and that the fire came after. What could be more obvious than that a fire used for cooking or some business purpose in a house that fell should have caused the damage? Besides, even if there were a fire before the earth moved, soon after there were three and those destroyed in the track of the other two were clearly not covered.

\* It was curious that before the earthquake this fire was not noticed by the inmates of the house or by the passers-by until after the tremor was over. Those who would naturally see first, did not see at all. The inference was that the shock had upset some chemicals or drugs on the bunsen burner—the house was in part a doctor's surgery and in part a wholesale chemists—and thereby caused the fire. But the maid said she had put out the burner, and though the drugs were inflammable, no one could say that they would set themselves on fire.

Great controversy raged over this part of the case. Counsel discussed at length questions such as how long the burner was needed to sterilise instruments, and how a maid could know when an instrument was properly sterilised without being told, and also what chemicals and drugs were there, and their nature, and whether they could or would ignite if they were suddenly thrown down when the house was shaken.

Besides, there were two circumstances to negative the companies' contentions. The smoke had been seen by a number of people before the earth moved. Captain Munro of the *Lady Shea* was bringing his vessel to anchor when he noticed the smoke. Five minutes afterwards came the shock, and then his anxiety for his wife, for she was at home in the town, sent him ashore as fast as he could row. Two negro boys, servants to the German Consul, were at his house in the hills six miles away looking for German vessels entering the harbour. The Consul, when he was at home, used to tip them for reporting such ships. He was not at home, but yet they kept a look-out, and as they watched they saw in the town a column of smoke rising high in the air. Then came the earthquake. Other observers nearer the town saw it too. One of them was of a scientific turn of mind. He noticed how high it was compared with the church tower, and months later took angles from which he was prepared to swear that the column rose exactly 205 feet. He would not admit an error of more than five feet either way. The nearest of those who had seen the smoke was a neighbour's wife. She sent one of her twelve children to call his father so as to make sure, but before the message was delivered the house was thrown down, and the severely injured mother was searching for her children. She found them all, but one so injured that it only lingered for a while to die of a broken back. She was attacked in cross-examination because she told her story months later and her husband had tried to keep her out of the box. One would have thought that her absence for months, recovering from injuries and nursing her frightened children, one of whom was slowly dying, amply accounted for both of these facts and should have prevented the severe attack upon her veracity. Of course, her evidence was vital; if she were believed, a great part of the companies' case utterly collapsed. These witnesses had seen a fire which had already started.

The evidence did not rest there, for many saw the column

as the dust-cloud cleared away. It was well established that the cloud only overhung the place for at most five minutes—too short a time for a freshly started fire to reach up a pillar of smoke to heaven. Even witnesses who thought the earthquake caused the fire admitted that the smoke was thick and high a bare five minutes after the shock. And Mr Dupeily, one of the neighbours, acted in a way that showed what he believed, for, being caught by the aim under a beam in his fallen house within the shortest time after the earthquake, was so convinced that to remain would mean his being burned alive by the fire next door that he tore himself free, leaving flakes of his flesh behind, so that his arm had to be amputated. If there had been no fire a few moments before, his fear would have been foolish. But if there were a fire which had got a good hold his action was natural.

But, even then, accepting a fire raging in King Street, how about the fire in Harbour Street, some four hundred yards away? The case was, as I have said, a test case about a shop, No 104 in the latter street. The second fire was at No 92 Harbour Street, a shop known as the Army and Navy Stores, and the companies contended that this fire at least followed the earthquake, as indeed it did. Now the owners of No 104, and in consequence all those in like case, answered the contention in two ways, first, by claiming that the Army and Navy Stores caught light from the King Street fire, the wind set that way and blazing embers and sparks could do the damage, secondly, by contending that the evidence showed that both fires were spreading towards No 104 but that the King Street fire got there first.

The companies were confident of their case on this point. When the Stores fell, a number of men were imprisoned under the ruins. A quantity of safety matches had been stored by a door, and near them wine and oil. The upper floors and beams had fallen upon them. One man, Captain Davies, escaped in a few minutes or so and climbed out over the place where the door had been. The others of whom anything was heard again were caught further away—in twos and threes, near enough to talk but in inky darkness. One by one, they ceased to talk, and just as the three nearest the street began to feel heat and smoke rescuers arrived and they were saved. How long had elapsed, the survivors could not tell. They were in utter darkness, and time passes slowly in such



a plight. Mr. Henriques thought he was imprisoned from twenty to thirty minutes. When they emerged into daylight, the debris had caught fire. The others could not be reached, and it is to be hoped that they died before the flames reached them. The flames came up from quite another part of the shop. The companies' theory was that the safety matches caught alight, but it called no scientific evidence to show that that was even probable.

Captain Davies could not have escaped over the place where the matches were lying, if they had fired. The alternative theory was that one of the entombed struck a match. No witness said so, though several were there, and it is a singular fact that none of those who complained and then ceased to speak ever mentioned fire, heat or smoke. Yet they complained of pain. Besides, if a fire were caused by the lighting of a match, the earthquake did not cause it, and the companies would be liable.

The second contention, that the original fire got there first, depended upon dry facts. A most important factor was the wind. It was light and variable, but the witnesses differed so much that if all were believed, there never was so variable a wind. Mr. Little on this point was an invaluable witness, not so much for what he said but for what he did. He observed the fire and the way it spread, and with the wind he noticed the peril to his ship to be so grave that he bent his energies to saving her from fire. An experienced seaman would not so waste his time unless the wind did set his way, and his photographs, for later on he found leisure to use a camera, showed the way the flames spread.

The fire brigade was called, and gave most contradictory evidence. This is not to be wondered at. Working singly and by twos and threes, they were overwhelmed by competing demands upon them, and they worked where and as they could, striving, not to observe, but to quench the flames. The superior officers, with more opportunity to watch in order to fulfil their duty and to direct, believed in the spread of the King Street fire. Their men in the streets, working first here and then there, believed that fires broke out all round. There were some curious incidents. At the Central Station the coach-house was damaged, and as they set to work to release a horse, in the nick of time a horse cantered up from the sub-station, where its stable had fallen, but so as to leave it

free. Feeling the need for companionship, it set off home, and by this chance a horse engine was sent out at once. The Governor, Sir Alexander Swettenham, was in the streets urging on the work of rescue. He did not give evidence, but a witness spoke of receiving directions from him.

The evidence called at the trials was a mass of contradictions not to be wondered at. The shock had imprisoned many, and the fortunate, so soon as they realised the plight of others, were at once absorbed in the work of rescue. Husbands sought wives, wives their husbands, parents their children, and friends their friends. To add to the confusion looting began, and had to be suppressed quickly and sternly. Few could have had a clear idea of those awful moments and those crowded hours.

It is the task of juries to find the truth from the oral testimony of witnesses on both sides. It is the duty of the lawyers to urge upon the judge and jury those circumstances and considerations which in their view demonstrate the justice of their clients' case. When the witnesses have been heard and the counsel have had their say, it becomes the judge's duty to direct the jury as to the law and to point out to them the issues of fact, summing up the evidence given on both sides.

The jury, who had seen and heard the witnesses and had listened to counsel and the judge, had held that No. 104 Harbour Street was destroyed by a fire which was not caused by the earthquake.

Before the Privy Council, as in all appeals from a jury's verdict, it was not an issue whether the Court would have come to the same decision. Whether there is evidence upon which the jury can come to a particular finding of fact is a question for the Court, but whether that shall be the finding of fact is for the jury to decide. An appeal from a verdict is not a rehearing of the case. The Court will only upset a verdict when the jury has been properly directed as to the law and the issues, if it is convinced that the finding was entirely unwarranted by the evidence given, or that in the circumstances the verdict is so perverse that no reasonable jury could honestly have come to that decision. But if evidence was given on the facts, it is for the jury to say whether they accept it or not.

My friends and I urged upon the Court that, in spite of the lengthy and admirable argument of Sir Robert Finlay, there

was such evidence, and that the appellant companies could only succeed if the Court ignored these principles of English justice, and were to hold that, though such evidence had been given, and though the jury had accepted that evidence, they would substitute themselves for the jury and assume a power and jurisdiction which was not theirs.

Our argument was too well founded on reasons and authority not to convince the eminent judges who sat at the Appeal Board. They declined to go beyond their functions, and dismissed the appeal on the ground that it had been shown that evidence had been given upon which the jury could properly have come to the determination which they had.

The verdict therefore stood. The providential column of smoke had saved the situation and thus the earthquake at Kingstown is noteworthy among all earthquakes in that the fire which completed its ravages accompanied but was not caused by it.

*Sir Roger Casement*



## SIR ROGER CASEMENT

ON 1st August, 1913, Sir Roger Casement, C.M.G., His Majesty's Consul-General at Rio de Janeiro, retired after twenty-one years' public service in Africa and South America. It is not often that a Consul comes so prominently before the public as he had done, for on two occasions he had been engaged on prolonged and difficult investigations in unhealthy tropical districts on matters which had gravely troubled the public conscience—the Congo and Putumayo rubber atrocities—and his name had thereby become a household word.

After his treason there was manifested a disposition to minimise the importance and accuracy of his reports, but there is no reason to doubt the reality and value of his public work. He was, therefore, a man who had fully earned his honours, and the right to retire.

I cannot say why he chose to quit his duties when he was just short of fifty, but, if one may conjecture, it was probably due to the fact that he had spent nearly all his official life in tropical regions and had been continuously engaged in unusually hard work, which would tax the strength of any normal individual working in a temperate climate.

After his retirement he appears to have taken an interest in politics. He was of Irish birth and parentage, his father having been an officer in the Antrim Militia.

At first, if I remember rightly, he was engaged in an unsuccessful attempt to re-create the Liberal party in Ulster, but by 1914 he is found to be actively employed in the organisation of the Irish National Volunteers. In connection with that work he asserts that he visited the United States, and he may have been there when the War broke out. He drew his pension down to the end of September, 1914, and, as he is not known to have had any considerable private means, it is a matter for conjecture how he managed to live afterwards.

It will be remembered that at the outbreak of the War there was a very serious crisis in Ireland, which was at once suspended by a kind of mutual truce. Casement was following

a course of his own. From a public servant remote from domestic politics, he had been gradually becoming more extreme, and, by some process which it is impossible to trace, he had determined to throw in his lot with Germany.

There is nothing in his career to explain or justify this. He had recently retired, and there can have been no grudge or fancied slight which would have turned him against his duty to the King, at whose hands he had gratefully received the signal honours bestowed upon him. He has left no statement which enables us even to guess.

At his trial, he claimed that he was actuated by a burning and exclusive desire to serve Ireland, but his interest in his native country was of recent origin, and others who had spent their lives in furthering Irish aspirations took a saner and more statesmanlike course. It may be that he allowed himself to be seduced by one of the German agents who swarmed in the States at the period.

However that may be, by December, 1914, he was in Germany, moving about the country in a way which proved that he enjoyed the countenance and support of the German authorities.

The first manifestation of his enmity to this country was one of the meanest, and particularly so when it is remembered that he had been himself a public official. He was employed to seduce from their duty the Irish soldiers who had been taken prisoners by the Germans.

It will be remembered that in the earlier stages of the War many of our troops had been captured, and these were scattered through the prison camps in Germany. In December, the Irish soldiers were collected together in a camp at Limburg, in the Ruhr area, and given better rations and lighter duties. At the same time Casement was engaged in addressing them in speeches breathing hatred towards this country and trying to persuade them to join an Irish Brigade. He set up the contention that this brigade was only to be used in Ireland after the War, but it may be doubted whether he expected anyone to believe this. The German Government had never been conspicuous for altruism, and still less would it be expected that, in the course of a struggle which called for the utmost effort, they would allow time and money to be spent with the object of forming a Volunteer force for use after the War, when, if they won, they could have a decisive voice without

needing the brigade, and, if they lost, could not influence the course of events. It is obvious that trouble in Ireland during the War was the only factor that would further Germany's aims, and the evidence was clear that the brigade was to be used at once—at least, as soon as the expected naval victory, which never came, enabled the Germans to get into effective touch with Ireland.

"Now is the time," said Casement, in one of his speeches, "for Irishmen to fight against England."

To the honour of the Irish prisoners, Casement failed. Only some fifty men joined, and several of them, if not the majority, were actuated by the desire to escape from the monotony and hardships of prison life. The remainder, in spite of pressure brought to bear on them in every conceivable way, stood firm, and Casement was forced to come to the camp under the protection of German soldiers, so that he could escape the just resentment of the prisoners at his disgraceful and unmanly attempts to divert them from their duty. His visits were frequent until February, 1915, when it became more than certain that this treasonable intrigue was a hopeless failure.

What happened to the brigade we do not know, but one may be sure that the fifty lived to repent in bitterness the day when Casement led them astray.

Between February, 1915, and April, 1916, it is impossible to say what Casement was doing. He may have visited neutral countries near Germany, but, whatever form his machinations took, he was continually during this period in close communication with the enemy.

In 1916, Good Friday fell on April 21st. On the night before Good Friday, persons in Tralee saw a light at sea, and during the night a boat came to the shore containing three men. One was Casement, and another was Bailey, a member of the Irish Brigade who had joined with a view to getting back home if he could. When they landed, the boat was abandoned on the shore, and Bailey buried there some weapons, some maps of Ireland of foreign origin, and three coats, one of which contained Casement's diary.

The names of persons and places in this diary were fictitious. We know that Casement came on a German submarine from Wilhelmshaven. The entry of this voyage reads: "Left Wicklow in Willie's yacht." There appears to have been a



mistake as to the rendezvous, for a motor-car had come to the coast a short distance away, but the driver miscalculated his position and drove into the sea, whereby his passengers were drowned.

It was not long before the police were informed of the suspicious visitors ; and, though they had gone inland and separated, both Casement and Bailey were arrested during Good Friday. On the way to the police barracks Casement dropped a paper. It was seized, and on examination proved to be a code relating to warlike supplies, with a note that it was in force only for a short time. Clearly, therefore, Casement was on an expedition which was to become immediately effective.

Nor was that all. On Good Friday, H.M.S. *Bluebell* sighted, off south-west Ireland, not far from Tralee, a vessel disguised as a Norwegian tramp steamer, the *Aud*, on a voyage to Genoa. She was escorted to Queenstown, but, just before reaching there, she stopped and hoisted German colours. The crew, who proved to be all in the German Navy, took to their boats, and surrendered, but, before anything could be done, an explosion was seen on the vessel, which sank at once.

It was proved that this ship belonged to the firm of Wilson's, and had been taken by the Germans at the outbreak of war. A diver went down and had no difficulty in establishing that she was laden with rifles and ammunition, some of which he brought up. The coincidence is too remarkable to be accidental. Casement came by arrangement with the Germans, accompanied by a shipload of munitions of war. At Easter, the Irish rebellion broke out in Dublin, and it is easy to picture what might have happened had Casement's scheme not gone awry.

He was brought to England for trial. There are many peculiarities about the law of treason, and one is that treason committed abroad is triable before the Courts in England. Casement tried to make capital out of the fact that he was brought here for trial, but there was no other course open. Moreover, so far as one can tell, his usual abode was in England. The prosecution went through the usual stages. As Attorney-General, I was in charge of the case throughout. First he was brought up at Bow Street before Sir John Dickinson, and was committed for trial on May 17th, 1916.

The trial was at Bar. In such a trial three judges at least sit, and in this case Lord Reading, the Lord Chief Justice, was

assisted by Avory and Horridge, JJ. The counsel associated with me were the Solicitor-General (now Viscount Cave, L.C.), Mr. Bodkin (now Sir Archibald Bodkin, the Public Prosecutor), Mr. Travers Humphreys (now Sir Travers Humphreys, Senior Treasury Counsel at the Old Bailey), and Mr. (now Mr. Justice) Branson.

The prisoner was most ably defended by three junior members of the English Bar, Mr. Sullivan, who at that time was also one of the prominent leaders of the Irish Bar holding the rank of Second Serjeant, Mr. Artemus Jones, and Mr. Morgan, the Professor of Constitutional Law at University College, London. All three have now "taken silk." His solicitor, Mr. Gavan Duffy, shortly afterwards went to Ireland and was one of the signatories to the Treaty. Mr. Doyle, of the American Bar, was also present, assisting the defence.

An untoward incident occurred very early in the case. A juror fell ill, and the case had to commence again with a new jury. I need not go into the details of the evidence. The witnesses were hardly challenged, except on the point whether the brigade was to be used during or not until after the War, but they remained unshaken.

The real interest to a lawyer was the point whether any offence had been committed. Mr. Sullivan took the point before the prisoner pleaded, but the Court thought the best course was to hear the evidence first, because then the facts would be fully before the Court. Consequently, when I closed the case for the prosecution, the legal argument began. It was necessarily long, technical and intricate. It involved the true meaning of the Statute of Treason, passed in 1351, which was drawn up in Norman French. It necessitated a minute examination of a number of musty Statutes, long since repealed, and many cases, both old and new, in which various persons, some of the greatest eminence and others of very humble rank, had become involved in accusations of treason. To understand the precedents, it was essential to grasp the details of antiquated procedure and to have a clear idea of the Constitutional position of England in regard to Wales, Scotland, Ireland, France and the Colonies, at the various dates when the precedents came into being, and to examine and discuss the opinions of many bygone judges and legal writers of the greatest eminence and reputation.

Casement was charged with that kind of treason which is described as "adhering to the King's enemies." Strange as it may seem, it was contended that this offence could only be committed by a person physically present in this country. If this were the true meaning of the words of the Statute, then Casement had committed no offence, for he had done nothing in the realm of England. The defence were confronted by the fact that not only was there an unbroken current of legal opinion, from the sixteenth century onwards, dead in their teeth, but such decisions as there were, necessarily few because such offenders take care to remain out of reach, were also against them.

I had little difficulty in disposing of the legal objection. Casement made a statement, but did not go into the box to give evidence, and, after Counsel's speeches and a judicial summing-up by Lord Reading in terms most scrupulously fair and impartial, the jury convicted and Casement was sentenced to death.

An appeal was at once lodged and heard, as criminal appeals always are, within a short period. Mr. Sullivan did his utmost to convince a strong Court, presided over by Mr. Justice (now Lord) Darling, that the point he had taken was good law, but without success. His argument was, in the words of the judgment, "exceedingly well considered, well delivered, and in every way worthy of the greatest traditions of the King's Courts," and the prisoner's Counsel can justly claim that all that human skill and ability could do for him was done.

Then came an attempt to appeal to the House of Lords. This placed me in a singularly delicate position. By the Criminal Appeal Act, no such appeal can be lodged without the consent of the Attorney-General. I had throughout argued that there was no substance in the point raised by the defence. I had to consider the position from a different point of view. It would have been easy to have consented, but that would have been a negation of my duty. After the most careful and anxious reconsideration, I came to the decided opinion that I ought not to shrink from the responsibility of refusing the application, and accordingly no further appeal took place.

It was no part of my duty to consider whether the King should show any leniency to the prisoner. There can be no question that the decision not to interfere with the execution

of the sentence was right. Casement, blinded by hatred of this country, as malignant in quality as it was sudden in origin, had played a desperate hazard in our hour of need. He had lost, and his life was forfeit.

It was, however, still his destiny to raise doubts in legal circles. The act of abolishing public executions did not apply to treason, and it was asserted that the execution must, therefore, be in public. It is doubtful in the extreme whether there ever was any rule that a death sentence must be carried out in public, but in any case an Act of 1887 had authorised sheriffs to execute any death sentence in a prison within their jurisdiction. Casement was accordingly hanged in Pentonville Prison on 3rd August, 1916. The day after his execution it was announced that the King had, before then, deprived the traitor of the honours that he had earned and of which he had proved to be unworthy.



# *The German Hospital Ship*



## THE GERMAN HOSPITAL SHIP

THE Prize Court is a very special tribunal which only comes into existence in a country which has embarked upon a war, and its main jurisdiction is to determine whether ships or cargoes belonging to enemy or neutral subjects have been properly captured in the due exercise of belligerent rights.

The law it administers is International Law, and it follows, from the origin and nature of its jurisdiction, that the outbreak of war often finds both judges and advocates without practical experience in the conduct of prize cases. Fortunately, the Universities and the Inns of Court provide instruction in International Law ; so that we are assured in any event of a supply of lawyers who have a sound theoretical knowledge which they can readily turn to practical advantage.

When I became a Law Officer in May, 1915, I found the Prize Court in full swing. The President, Sir Samuel Evans, had already laid down the main lines of that marvellous adaptation of ancient rules to modern conditions upon which his fame as a judge so securely rests. Nevertheless, as the blockade tightened, and Germany's needs grew more and more urgent, and supplies harder and harder to obtain, many difficult and intricate cases arose which called for close detailed study of a multitude of commercial doctrines and facts.

There had been built up a system of recording information which placed at the disposal of the Procurator-General, who acted as Crown Solicitor in all prize cases, a mass of information about persons, places and commodities from which his skilled assistants could prepare the evidence upon which the Crown relied.

Volumes could be written on the various crafts and subtle devices to which the Germans resorted. Rubber, for example, was misdescribed, then disguised. Our naval authorities found books, soap, fruit and almost every conceivable commodity which when closely examined proved to be rubber intended for German use. We succeeded in stopping the supply.



All the ancient methods of secret communication—messengers, secret writing, codes, false names, and covert allusions—were revived and placed on a scientific basis with the aid of the new methods of telegraphy. It was unceasing labour, for no sooner had one device failed than another was adopted, and these not one at a time but many simultaneously.

And with all this task of investigating details and unmasking fraud, the principles of International Law had to be borne in mind and applied steadily to the cases. The nation is not aware of the immense labours, or of the unceasing vigilance, of those upon whom fell the task of justifying the seizures which the Royal Navy made.

It is not easy to select from the many cases that fell to my lot to conduct one which stands out in interest and importance beyond all others. I have selected the case of the German Hospital Ship, because, on the one hand, not only does it illustrate the work both of the Royal Navy and of the lawyers, but also because it throws a light upon German habits of thought, and shows how it was that they falsely concluded that we for our part were habitually abusing the Red Cross.

The ship in question was the *Ophelia*. She left the Thames on 3rd August, 1914, a date just before the War, when the Germans were holding up our ships in their ports. She was a German-owned, merchant-ship built and adapted for the carrying of merchandise. She reached Germany in safety. On arrival she was ordered to a naval dockyard, underwent a thorough overhaul, and was then equipped and painted as a hospital ship.

Under the Hague Convention such ships, if built or adapted wholly and solely with a view to aiding the wounded, sick and shipwrecked, are absolutely immune from capture, provided they are not used to commit acts harmful to the opposing belligerent power.

Although the case was in its main features not a very difficult one, it was unusually troublesome because of the mass of detail. The equipment and arrangement of the vessel had to be considered in the light of her alleged employment as a hospital ship and of the charge that she was in fact used for scouting purposes, and in both those matters she had to be compared with properly equipped hospital ships. Her movements had to be traced not only from observations made by the witnesses on board British warships, but also from such of

the ship's papers as fell into our hands, and the varying statements of her crew compared with the Crown evidence in the light of the information painfully pieced together from such documents.

It called for the closest co-operation between the Crown lawyers and their technical advisers from the Admiralty, and for much hard work on confused and intricate details before the main outlines could be established and clearly stated before the Court. Yet this task was indispensable for the double purpose of establishing the case for the Crown and demolishing the case set up by the Germans.

The captain attended the Court and gave evidence, a comparatively rare event in a prize case.

She came under naval observation on two occasions. The first was on 8th October, 1914, when she was seen by a submarine which was on patrol outside the mouth of the Ems. On the 6th a German torpedo-boat had been sunk by a submarine off the Ems. The *Ophelia* was then lying off the Weser, and, so it was alleged, was ordered to the Ems for duty.

The mystery as to her orders was never solved. Her captain "thought" he was told the boat had been sunk, and he also "thought" he was told there were survivors, but it is certain that no one told him where the sinking took place, and he did not know it on the 8th. Yet, on that day, much too late to be of any legitimate service, the vessel was cruising off the Ems and a long way from the scene of the disaster.

The submarine commander observed her movements for some time, and, as a result, he became suspicious. He followed her and she ran away. Although he had only some four miles to make up, and his craft was going at eleven knots, he could not overtake her before she got too near the shore to be safe for him to follow, and so she got clear away. It was alleged that this must be a mistake, as she could not do more than nine knots an hour, but I disproved this objection by producing her log for other voyages which she made before the War, when she constantly averaged eleven knots. It may be remembered that though a hospital ship cannot be captured, she may be inspected. No hospital ship legitimately employed should have any need to run away.

The fact was that this hospital ship, under orders which were never produced, was cruising at a place where she could

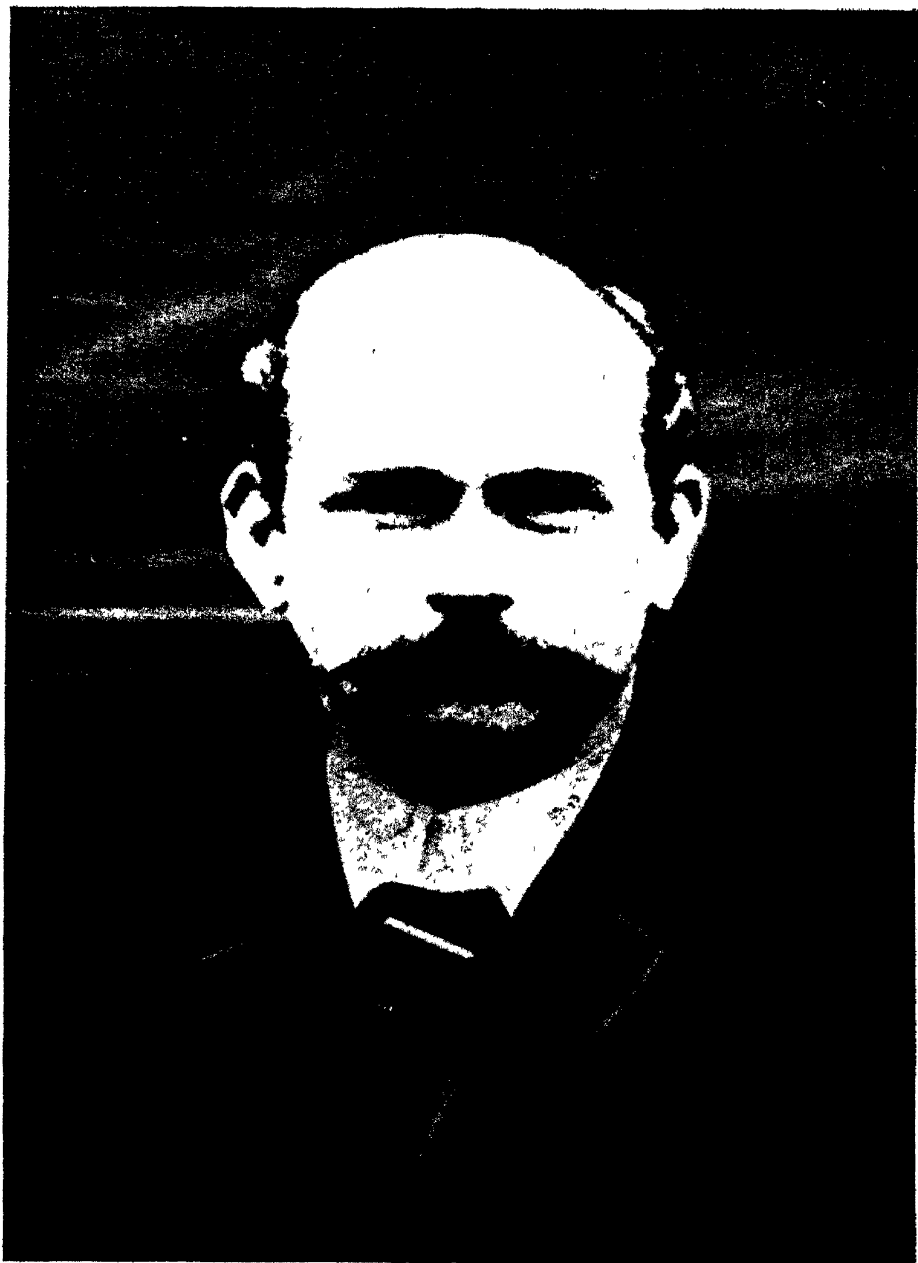
do no proper work, and, when sighted by a British submarine, went off home at full speed, though it was broad daylight and she had not finished the task in which, as she alleged, she was engaged.

When that is coupled with the fact that on the 6th a flotilla of torpedo-boats had made a dash from the Ems, had been intercepted and one of them sunk, and the rest had since been keeping safe within the river, it is certainly open to suggest that her real object was to ascertain whether British submarines were about, her status protecting her from the fate which might befall a torpedo-boat on scouting duties. The suspicions of the submarine commander were, at least, extremely natural. On this occasion she got clean away. Taken by itself, her behaviour might not have been conclusive of her guilt, but it was not the only time she was seen. Her second appearance was not so successful, and her career came to an end. It happened in this manner.

On October 17th, 1914, the *Ophelia* was ordered to the Haaks lightship to obtain further orders. A fresh disaster had occurred. The four torpedo-boats in the Ems on 8th October had been sunk by a British squadron earlier in the day. The lightship was a convenient place at which to report for duty, but the *Ophelia* appears to have gone to the scene of the disaster. Her presence was revealed by the fact that in the afternoon she was heard sending code messages to Norddeich station, the great German wireless installation.

No small mystery envelops the orders which she received, or the question how she obtained the information of the disaster, or knew where to go, for her record of messages received and sent did not, as it should have done, disclose any such information. Nor was it ever shown what message it was that she was sending in code, for the time did not correspond with the story that she was asking for instructions; that request having, on her own story, been made at noon, whereas the message was being sent some hours afterwards. Moreover, there are no circumstances which would justify such a ship sending messages in a secret code, however reasonable it may be for her to receive them.

She could do no good in her proper capacity where she was, and after being watched for some time her actions were found to be so suspicious that she was seized. A captain who could, with such vague information, proceed so expeditiously to the



FREDERICK H SEDDON

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J. Walter Smith Esq., copy 2/12.  
Dear Sir

I feel it is a very stray point in  
my favour that I had to draw  
on my own bank for the sums of  
£90 Sept 19/11, £100, Oct 6/11, also from  
my post office a/c "Nov" £43, total  
£233.

How is this consistent with  
the suggestions of the Prosecution that  
I was possessed of the £892 alleged  
to have been in the possession of Miss  
Ballow? I must not need to be  
drawing on my own banking a/c if  
I had had her money. Kindly put this  
to counsel. Yours faithfully, J. H. Seddon.

NOTE WRITTEN BY SEDDON

during the luncheon interval on the second day of the hearing of his Appeal

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of the Seddons," by Filson Young, in the Notable British Trials Series)

place where his vessel might be wanted, but had not been sent, would have been wasted in command of a hospital ship, but on the 8th his skill, so convincing on the 17th, had not been of such outstanding merit.

When search was seen to be inevitable, she committed a serious breach of International Law. The secret codes were thrown overboard, which may be justified, and her other records were jettisoned, which may not. This was sought to be explained by saying that they acted on the principle that it was better to throw away too much than too little, but if the story told be correct, it was the very evidence that would establish her innocence which was so carefully destroyed. It is certain that if such evidence existed it would have been flourished before the search party, and one can safely assume that the messages were such that they could not be allowed to remain.

There would naturally be a record of these messages kept by the others with whom she was in communication, so that even if the *Ophelia's* records had legitimately been destroyed, it did not prevent the messages being produced. Needless to say, no attempt to bring any such evidence was ever made.

But that was not all. After the seizure, the accounts of the stock and consumption of searchlights were surreptitiously thrown overboard. They had not been asked for, nor any mention made of them. If there was no evidence against the ship to be deduced from the book, it was mere waste paper, and yet it was destroyed.

This brings me to a most important and damning part of the case.

When the *Ophelia* reached port, Commander Newman, an officer of great experience in fitting hospital ships, was asked to report on her suitability as a hospital ship. He was not told why she was detained, and was allowed to think that he was reporting upon a proposal to use her in the British service, so that his report should be absolutely fair. He reported that she was unsuitable for a hospital vessel, but was fitted and intended for signalling work. As a hospital ship she would, of course, require signalling apparatus, but not extensive fittings. The fact that such a vessel may cruise with impunity in places where she could obtain information useful to her country, but not otherwise obtainable, renders such a vessel peculiarly open to the abuse of being used as a scout.

She was found to have had fitted an unusually large number of signal halliards working on brackets from the funnel. These had been recently fitted, on an occasion when her masts had been lengthened, so as to increase her wireless range. It was explained that this was quite innocent; the halliards and wireless, as originally fitted, had interfered with one another and so had to be altered. But the international commercial code flags were stowed away in a place not easily accessible, though the halliards were kept for obvious immediate use. Unless there had been special German flags, which had been done away with, the new fittings were a pure extravagance.

It is idle to suppose that a mere inconvenience, operating only very occasionally, would be remedied at such trouble in a naval dockyard overwhelmed with really serious war activities. The new fittings, increasing her signalling efficiency, must have been made because there was an urgent naval purpose to be served, and that purpose one which could not be, in the circumstances, innocent or capable of explanation. They were of no possible advantage to her for her legitimate use as a hospital ship.

She had also an enormous number of Very lights on board. These are fired from special pistols, of which she possessed two; and there were 600 green, 480 red and 140 white lights. How many she originally had and how many she had used could not be shown, for the record was carefully destroyed, as I have mentioned. A British hospital ship, with its immensely greater chances of service, carried normally about twelve of each kind.

Naturally, the carrying of such an extraordinary stock called for explanations and several were put forward. One was so extraordinary as to be almost humorous. The captain said that, having no searchlight, they were used to illumine the sea at night. The two pistols firing white lights would be almost useless and the red and green lights of no earthly use whatever for that purpose. The excuse served only to emphasise the fact that if she were seriously intended for her ostensible purpose she would have had a searchlight.

Another explanation was that they used to acknowledge morse signals at a distance greater than their morse lamp would carry—an explanation possible, but not probable, and certainly not calling for such numbers. It was also stated that they were used to identify her on entering German

harbours at night ; but, if that were so, no information was given as to the identification signal or to show how many it would require.

The fact was that the lights could not be explained innocently, nor, we may conclude, could the book be produced without disproving innocence ; and so at all risks it had to go.

This vessel, therefore, ill-adapted and hardly even capable of hospital service, well adapted and most elaborately fitted for signalling, was found on two occasions, each immediately after a German naval disaster, cruising near the scene of the conflict, in pursuance of orders which were never properly disclosed, upon an alleged errand which was so useless as to be idiotic ; for she could serve no useful purpose whatever for saving or succouring sick, wounded, or shipwrecked German mariners, the only possible justification for her presence. On the other hand, cruising where she did on those occasions, she was in a position to obtain information about the British Navy of vital importance to the German forces, which could only be obtained by legitimate scouting at the risk of almost certain disaster, and she was sending messages in code which she never succeeded in explaining.

It is, of course, quite unnecessary to bring captured enemy warships before the Court in order to obtain a decision that they have been lawfully taken, but this was an exceptional case. Although belonging to the German Government, she was ostensibly engaged on service which exempted her from seizure. It was necessary to establish that she had forfeited the protection conferred upon hospital ships by the Hague Convention, and for this purpose a judicial investigation by the Prize Court was essential.

As the claimants were our enemy, the difficulty was surmounted by the captain making the claim on behalf of his Government. English counsel were engaged to argue the case on behalf of the ship, and they discharged their duty with that zeal and ability which is rightly expected from counsel. They put forward and strenuously maintained every argument and every fact that could tell in their client's favour.

Sir Samuel Evans unhesitatingly held, after an exhaustive review of all the facts and circumstances, first, that the *Opbelia* was not adapted and used for the special and sole purpose of affording aid and relief to the wounded, sick and shipwrecked ;





## THE "VERONICA" MURDERS

ON 11th October, 1902, the *Veronica*, a British wooden sailing ship of 1000 tons burthen, sailed with twelve men on board from Ship Island, in the Gulf of Mexico, with a cargo of timber for Montevideo.

The twelve men were the master, two mates, a negro cook and eight men. The master, Alexander Shaw, was a man of mature years, somewhat deaf, who on occasion wore glasses. He had been in command for several voyages with the same officers, both of whom had served in her before the mast. Only two of the others had been on her before. These were two German lads named Morisson and Flohr. The ship was seaworthy and properly provisioned. Being laden with timber she was practically unsinkable.

The *Veronica* was never seen again and the first news of her was received when one of her lifeboats, manned by five men, reached Cajuenia Island on Christmas Day. This island lies off the Paranyba River in South America, not quite 150 miles south of the Equator, and is owned by Liverpool ship-owners who have a warehouse there. The five men were Rau, Smith, Morisson, Flohr and the cook. Three were Germans, one English and one Dutch. The boat was in good order but was without food, chart or compasses.

The s.s. *Brunswick* arrived a few days later, and to her master, Rau, who claimed to be the second officer of the *Veronica*, told a sad but not improbable story of disaster. He said that while in Florida Straits, one man had died of fever and that shortly afterwards the chief mate was killed by an accident which also caused injuries to Smith, whose head bore two serious wounds and whose eye was cut. In consequence of the mate's death, the master had made Rau the second officer and the voyage proceeded without further incident until the night of 20th December, when during their watch below there was an alarm of fire. They rushed on deck to find the ship doomed and the captain ordered them to the boats. Both were launched and they got into the one but lost sight of the other

in the smoke. So great was their hurry, that they had no time to save anything and had subsisted on eleven biscuits and a cask of water. They had not even their caps, but had made shift with the stockings of the captain's sea boots.

The story was accepted. It is true that some questions were asked; but the answers were equally plausible and the other four men told the same story. Apparently it never occurred to anyone that it was strange that the master and first officer were in the same boat, leaving only a promoted seaman in command of the other.

The men were given passages in the *Brunswick*, which sailed for Liverpool, touching at Madeira, Lisbon and Oporto. Rau was berthed aft and the other four were being put in the foc'sle when the cook intimated that he had reasons, which he did not give, for being apart, and he was placed with the ship's cook. It was noticed on the voyage that the four Europeans were much together, as indeed was only natural, but that the negro avoided them and seemed much agitated and troubled in mind. During the voyage from Madeira to Lisbon the negro asked to see the master, and there in great perturbation of mind told an entirely different story. He alleged that the seven men who were missing had been murdered and the *Veronica* had been deliberately set on fire to destroy the evidence. The other four were kept under observation, and at Liverpool were handed to the police, to whom they made statements, admitting that the seven had indeed been murdered and the ship set on fire, but that the guilty man was the negro cook, and that they acted under fear of death at his hands. It appears that they had become aware that the cook had seen the captain, had formed the conclusion that they were betrayed, and had made provision accordingly. Flohr, however, broke down under the strain and on the same night confessed. He had not seen the cook, so that they could not have agreed on a common story, and indeed, though their evidence was in harmony on the main facts, each asserted that the other took a more decided part than he would admit.

The three others were thereupon charged with murder and piracy and came up for trial at the Spring Assizes at Liverpool in 1903. My friend Sir Alfred Tobin and I appeared for the prosecution and each of the three was defended by counsel. Two of them had no counsel and the Judge requested two

barristers to undertake the task, which they did gratuitously in accordance with the traditions of the Bar. Only one of the ten charges was heard, namely, that of murdering the captain, but the whole story necessarily was told in full.

No more brutal or purposeless murder was ever committed. There seems to have been no motive or reason whatever, unless the prisoners had a motive which they chose not to reveal. The evidence proved none.

The history of the crime, as given by the two witnesses, was this :

According to Flohr, Rau planned to run away before the ship sailed. Sometimes he was agreeable and sometimes unpleasant. There was a good deal of boasting. One man, Paddy, claimed to be the best seaman, but Rau asserted his own right to that title, on the ground not only of his competence, but also because he had learned navigation in the German Navy. Flohr admitted having been cuffed by both mates ; and also said that the chief officer had struck Smith for saying to him " What the hell are you yelling about ? " when he gave an order. He also said, but the cook denied it, that the food was scanty and bad and that sometimes the water was short. The ship had certainly taken sufficient provisions from a firm of standing. He further alleged that the cook had not kept the lights properly cleaned and that Rau and Morisson were always complaining of the second mate, who was the officer of their watch.

This was all the evidence of trouble that was offered, and the facts certainly justified the master's remark to Rau, when pleading for his life, that he thought everything was going on well.

About seven or eight weeks out, one night when Flohr was on the look-out, gossiping with Morrison, Rau, who had not spoken to him for a week, came along and told the two boys that they would soon be overboard, as he had heard the mates arranging to do it. He suggested that they should throw the officers overboard first, and, saying that Smith and Morisson agreed, asked Flohr to join in. Flohr said that he refused and wept, but ultimately agreed to join the mutineers.

The mutiny was arranged for the night of the first Sunday in December. At midnight the first officer's watch, Smith, Flohr, Paddy and Johanssen, went on duty, and at two o'clock Paddy was on the look-out and Johanssen at the wheel.

Flohr went to call Rau and found him conversing with Smith. After hesitations and delays, Rau went to Paddy and asked him if he could see the North Star. As the ship was heading, this meant that Paddy had to stoop to look under a sail, and as he did so Rau hit him twice with an iron belaying-pin. Paddy dropped bleeding and insensible, but not dead, and was dragged to the foc'sle and put in a locker.

Morisson had been set to watch Julius, who was on the watch below; but what Alec, the remaining man on the watch, was doing then, or at any time during that night, no one ever told.

The chief mate came forward and at once missed Paddy and called for him. Rau replied that he must be about as he had been fighting there. The mate came in the dark to the foc'sle and Rau hit out, but struck Smith, who naturally called out and dropped his revolver. Rau kept his head; he said: "Is that Paddy again?" and having made sure of his victim, struck the mate, who dropped with a deep groan. He was promptly put overboard, the first of the seven to die.

Rau and Smith went aft, leaving Flohr guarding Paddy. Two shots rang out and the second officer ran into the navigation room calling to the captain. Rau was then heard shouting at the cook, who was in his cabin. The negro had been awakened by the shots and had heard a man run past the door, calling out "Oh Lord, Captain, I'm shot." Next, Rau came to the door saying: "I've killed the captain, the chief officer and the second officer. Come out, you black son of a bitch." The cook barred the door and remained there till morning, Rau coming at intervals to abuse and threaten him.

Rau then ordered Flohr to finish off Johanssen, who was still at the wheel. Flohr went and struck the man, who ran forward and begged his life at Rau's hands. Rau relented, but only for a time. Flohr went to the wheel and on the way saw the captain on the deck, looking at the topsails. No one knows what he was doing all this time; probably his deafness had prevented him from realising what was afoot. Rau came aft, threw an iron belaying-pin at him and shot him twice. The captain fell and crawled to his cabin, where Rau locked him in. The two surviving officers were both wounded and secured. Rau knew that they had weapons, so it may be assumed that he would not risk going in to finish them off.

Julius was dead by then. He had tried to climb out of the foc'sle window and Morisson had killed him with one blow. He had been thrown overboard, and only a pool of blood remained to show where he had fallen.

Paddy then revived sufficiently to get out of the locker. He staggered, with his head covered with blood. He begged for water. Rau said: "I'll give you a good drink of water," and struck him dead. He, too, was thrown overboard, the third and last to be murdered that night.

In the morning the negro emerged and begged his life. Smith interceded with Rau, who gave way, but said: "Don't ask any damned questions." He was set to make coffee under the guard of Flohr, but, before it was taken, the negro was forced to drink some to prove that he had not poisoned it. The sparing of the cook was almost the only serious mistake Rau made. In such a case you must be thorough if you are to cheat the gallows.

The next task was to barricade the cabins and to discuss what was to be done. The negro said that he was shut up in the old sail room; but Flohr asserted that he went on with his duties as cook all the time. It was decided to prepare a lifeboat and the negro was set to caulk it. Meanwhile Rau wanted a chart and some instruments. The captain was called through the skylight. Both he and the second mate were there, each had two wounds and unless there was food in the cabins neither had any food during the rest of their lives. Rau got his chart and other things in return for a drink of water. The master reproached him for having made no complaint and begged for his life. Rau told him they were going to Pernambuco.

Then the discussion continued while the lifeboat was being got ready. At first the ship was to be taken to St. Paul's Rocks and there destroyed, but the risk of being spoken to was too great and it was decided to destroy her in mid-ocean. She was headed south-east at the time of the mutiny, but her course had been altered to south-west, so that during the fortnight or so they remained on board she was approaching South America. Three tasks remained: to prepare and provision the lifeboat; to destroy the vessel, having first finished off the two wounded men; and, lastly, to agree upon a convincing story which they could all learn by heart.

The officers were soon settled. The mate was called up



# *The Marconi Scandal*





# THE MARCONI SCANDAL

## THE TRIAL OF REX V. CHESTERTON

I DO not intend to write a history of the Marconi controversy which embittered politics during the course of 1912 and 1913, but only to tell the story of the prosecution of the late Mr. Cecil Chesterton for publishing criminal libels on the late Mr. Godfrey Isaacs in the course of attacks upon the contract for the Imperial Wireless Chain made by the Postmaster-General with the Marconi Company in 1912.

I must, however, sketch the outline of the main events, in order that the way in which the mass of erroneous deductions and inferences from mere coincidences came into being can be understood. This outline may, however, serve to clarify ideas on the political controversy, of which echoes are even now occasionally heard.

Signor Marconi is still comparatively young, a fact which enables us to realise how rapidly wireless has developed, for he was well known in electrical research before he began wireless experiments. Like most useful inventions, wireless telegraphy passed through many stages between the times when it was a laboratory toy and when it became a business proposition. By 1897 sufficient advance had been made to justify forming a company, and contracts were made with the Government in 1903 and 1909. By the last date the invention was chiefly used for communications between ship and ship, or ship and shore, besides being used over comparatively short distances on land. It may be remembered that the apprehension of Dr. Crippen in 1910 was due to the fact that the S.S. *Montrose*, on which he was sailing for Quebec, was fitted with wireless, then a somewhat unusual circumstance.

By 1910 further progress made it feasible to communicate across oceans. In this year Signor Marconi found that the business had so expanded that it interfered with his scientific work, and he ceased to be managing director. He was

succeeded by Mr. Godfrey Isaacs, a brother of Lord Reading, then famous as Mr. Rufus Isaacs, K.C.

In the same year the Marconi Company applied to the Government for a licence to erect a chain of wireless stations which would enable them to send messages round the world. It was entering the field as a competitor of the cable companies. The proposal being to erect these stations in lands situated within the British Dominions, a licence was necessary before the scheme could be put in hand.

Such applications were, as a matter of course, referred to the Cable Landing Rights Committee. This was a standing body presided over by the Parliamentary Secretary of the Board of Trade, and its members consisted of representatives of the Admiralty, War Office, Foreign Office, Colonial Office, India Office, Post Office and the Treasury. Its duty was to examine and report upon such applications from all points of view—Imperial, strategical, technical, commercial and financial. Its origin was naturally to examine the applications of cable companies, but when this application was made in respect of a wireless system—a completely novel project—the Committee was, by its nature and functions, competent to deal with the matter.

This Committee ultimately reported that such a chain was feasible and necessary, but that it was not in the public interest to allow it to be in private hands. It was too vitally important to allow the Marconi or any other company to control such a service.

About the same time Sir Joseph Ward, then Prime Minister of New Zealand, had carried a motion at the Imperial Conference in favour of such a scheme. The preparation of an actual proposal was referred to the Committee of Imperial Defence, which delegated the preliminary inquiry to a sub-committee of experts. By June, 1911, these bodies had decided that the matter should be taken in hand as a matter of urgent public importance, and the execution of the project was entrusted to the Post Office.

Mr. Herbert Samuel (now Sir Herbert Samuel, and lately Governor of Palestine), who had just become Postmaster-General, formed a third committee, known as the "Imperial Wireless Committee," from the various Government Departments concerned. This Committee decided after much discussion that the equipping of the stations should be put

out to contract, and that the Marconi system should be adopted. They had considered the rival systems, of which there were several, and had rejected them. The Marconi system alone had given practical demonstrations over the required distances, and the company alone had the necessary experience. Naturally the companies which owned and were developing the other systems were disappointed, for the obtaining of such a contract was an unmistakable testimony to the pre-eminence of the system selected.

In December, 1911, negotiations were opened with the Marconi Company. Mr. Samuel represented the State, and was aided by the assistance and advice of experts from a number of Government Departments. There were in the service of the Admiralty, the War Office and the Post Office, a number of experts who had great practical experience of wireless telegraphy and a competent knowledge of all the rival systems. The Company was represented by Mr. Godfrey Isaacs and his staff. It was during these negotiations that Mr. Samuel first met Mr. Isaacs, and they had no private intercourse at all. Mr. Rufus Isaacs had become a Law Officer and been knighted, but took no part in the negotiations, of which indeed he was entirely unaware. It is no part of the work of a Law Officer to take part in such matters.

Eventually, after hard bargaining, terms were arranged, and the Company sent in a tender which was accepted on 7th March, 1912. Shortly, the scheme was that the Government should build, and the Company should equip, six stations at a cost of £60,000 for equipping each station. The Company was to give the Government licences for all existing and future patents, and its advice and assistance, and to receive during the terms of the contract a royalty of ten per cent. The contract was to run for twenty-eight years, with a "break clause" at eighteen years, and the royalties were to cease if the Postmaster-General decided at any time to discontinue the use of the Marconi System.

Mr. Isaacs had in vain tried to secure that the "break clause" should be kept secret. The day after the acceptance of the tender he issued a circular to the shareholders, announcing that the tender had been accepted, but he did not mention this provision. A great deal was afterwards made of this omission.

It must be borne in mind that the Company had two

and there was nothing for it but an inquiry. A Special Committee was set up. The ratification was necessarily postponed and one consequence of this was that the War found us without this urgently needed wireless chain.

The setting up of a Committee did not silence Mr. Chesterton. The attacks continued. He had taken a decided stand against party politics and had evinced an aversion to the influence of Jews. He was entirely ignorant of the way in which Government contracts were negotiated and drawn; and being struck by the boom and convinced that the contract was a bad one for the nation, leaped to the conclusion that it must have been privately arranged between Mr. Samuel, Sir Rufus Isaacs and Mr. Godfrey Isaacs, so that the public treasury should be raided for the benefit of the Marconi Company.

Primarily he was attacking the Jews and their political and financial influence. However misguided, he was completely honest. The contract offered a popular theme, and, almost without thinking, Mr. Godfrey Isaacs was included in the diatribes, and to reinforce them the files of Somerset House were searched. It was found that Mr. Isaacs had in years gone by been concerned in a number of unsuccessful companies—most of them were private ventures—but Mr. Chesterton saw fit to call upon the Attorney-General to do his duty and set the law in motion against his brother.

Such attacks are usually ignored, and so were these for a time, but they were pressed in such a way as to amount to actual persecution. Wherever Mr. Isaacs went he was pursued by placards. Street vendors with copies of the journals and large posters were stationed outside his offices and other places where he was to be expected, and his life became unbearable. He took advice, and resolved to prosecute. Mr. Chesterton had acknowledged that he was responsible for the publication of these attacks. Leave was obtained to institute a prosecution. He was brought before a magistrate and committed for trial at the Old Bailey.

The prosecution relied upon six charges of libel, contained in as many counts of the indictment. Five the defendant claimed were true, and their publication to the public interest. The sixth, he said, did not refer to Mr. Isaacs, and on this one count the jury upheld his contention. Once a person charged with libel justifies, the roles are reversed. He becomes

the accuser, and must establish the truth of his accusation or be found guilty.

The trial lasted ten days, from 27th May to 7th June, 1913 ; Mr. Justice (now Lord) Phillimore, was the Judge. Sir Edward (now Lord) Carson and I led the late Sir Richard Muir for the prosecution. Mr. Wild, K.C. (now Sir Ernest Wild, Recorder of London), and Mr. Rigby Swift, K.C. (now Mr. Justice Swift), led the late Mr. Purcell and Mr. Gordon Smith for the defence, which was conducted with ability and pertinacity.

All the prosecutor has to do is to show that the words were published by the defendant, that they are defamatory and refer to him. It is usually prudent, however, for him to meet the justification in advance and allow himself and his witnesses to be cross-examined before the defendant is called on for his defence. Such a course was followed in this case.

We called evidence showing exactly how the negotiations were conducted, and thus made it plain how ludicrous was the ignorance that had inspired the attack. Mr. Samuel, Sir Rufus Isaacs, Mr. Godfrey Isaacs, and Signor Marconi were all called and cross-examined at great length.

The defence had assumed that a great point could be made if they were able to show that the defendant acted in good faith, but he was not charged under the section dealing with the more serious offence of publishing a malicious libel. The Judge pointed out that it is no defence of a libel to prove that the defendant honestly believes it. A man is only entitled to publish such allegations if they are true, and if it is in the public interest that they should be published.

Then it was asserted that the politicians were the sole objects of the attacks on the contract. Certainly it was the main object, but even if it be laudable it only makes it worse to drag in the name of one who is not a politician.

Again it was suggested that there was no imputation on Mr. Isaacs over the contract, as he was entitled to do his best for the Company, and drive as hard a bargain as he could. But, then, how explain the use of such words as "corruption," "conspiracy," "abominable business," "hands in the till," and other choice expressions which were put in the articles ? They are not capable of such facile explanations.

When, however, the defence came to Mr. Isaacs' past record, they pressed the attack with vigour and venom. The

allegations could not be explained away. They were either true or else foul libels. There was no alternative. I will not gratify the defendant's supporters by reviving these allegations. The evidence and the verdict are sufficient to satisfy any unprejudiced reader that the attacks were as false as they were despicable.

In the event, the justification of the five counts failed miserably. The jury, after listening carefully to the arguments put forward on defendant's behalf, and to an able and impartial summing-up by the Judge, convicted the defendant, and thus finally gave the lie to the campaign of abuse that had been levelled at the prosecutor.

The vindication of Mr. Isaacs was all that he desired. He had no desire to see his libeller in prison.

In pronouncing sentence, Mr. Justice Phillimore stated that he had been troubled in his mind whether, in view of the methods adopted, he ought not to send the defendant to prison. The libels were due to ignorance and prejudice. However, as the attacks, although wrong-headed, were honestly believed, he decided to let Mr. Chesterton off with a fine, but ordered him to pay all the costs of the prosecution.

The verdict of the jury thus put an end to this particular crusade against Mr. Godfrey Isaacs—a crusade due to ignorance and confusion of mind, aided by unreasoning prejudice. With regard to the Ministers concerned, I need only refer to the War for readers to realise how disastrous for the nation it would have been if they had been driven from public life as a result of what was termed the "Marconi Scandal."

*Ethel Le Neve : Crippen's Mistress*





## ETHEL LE NEVE : CRIPPEN'S MISTRESS

**I**T will be many years before Dr. Crippen, whose trial was the great criminal sensation of 1910, will be forgotten. His crime was remarkable in many ways. It seemed incredible that the little insignificant man should have been capable of such an unusually callous, calculated and cold-blooded murder. It is not very surprising to find him using hyoscine, a poison new to the annals of crime, for he was a medical man. But the systematic mutilation of the body rendered the crime particularly beastly, and it is a curious circumstance that both Crippen and Mahon managed to dispose of the main organs, though one organ, the head, is particularly difficult to destroy. The method of mutilation and destruction shows that Crippen was skilful, but that Mahon was a miscalculator. Unlike the medical man, the latter had no conception of the magnitude of his task.

The most surprising feature of Crippen's case is that but for his senseless flight the crime might never have come to light, and it would have been told of some other criminal that in his case for the first time wireless telegraphy was employed in the apprehension of a fugitive.

The telegraph was first used to secure the apprehension of a criminal when a man named Tawell, who had committed a murder near Slough, succeeded in boarding a train for Paddington. Before the telegraph system had been installed he would have vanished in the crowd, but unknown to him, the police at Slough were able to telegraph his description to Paddington, and on the train's arrival he was arrested. Thus the invention of railways, which facilitated the criminal's escape, was countered by the telegraph, which outstripped him in his flight. The submarine cable was first used in 1864 to capture a murderer named Franz Muller, who had shipped on a steamer bound for America before his guilt was discovered. As in Crippen's case, the police were able, by taking a fast liner, to outsail the vessel he was on and to meet and arrest him on his arrival. It may also be remembered that a year or

two ago a man, who was afterwards acquitted, was arrested at Croydon aerodrome just as he was on the point of leaving England by aeroplane. Bevan got away by aeroplane and eluded capture for months until he was run to earth at Vienna.

My own part in the proceedings had nothing to do with Crippen. I was retained to defend his unfortunate companion, Ethel Le Neve, who was charged with complicity in his crime. In order to give a clear idea of her trial and of her acquittal it is, however, necessary to tell the story of Crippen's crime.

It was the outcome of the old familiar matrimonial tragedy.

The little man was nearly fifty. He had qualified in medicine in the States, and in 1900 had come to London to assist a firm of patent medicine vendors. During the ten years that followed he made the round of the patent medicine firms, one of which, the Drouet Institute, had in their employment a young girl, Ethel Le Neve, as a typist. She was under Crippen's orders, and their association continued even when they were not in the same employment.

Crippen was a married man living with his second wife, whom he had married in America. She was half German, half Pole, whose maiden name was Kunegunda Matamotski, though she preferred to be known as Cora Turner at the time of her marriage, and afterwards called herself Belle Elmore. Her ambition was to be a music-hall artiste, but she failed dismally, and had to be content with membership of a benevolent association to assist needy artistes. She was a woman of a flamboyant type, loud in her tastes and extravagant in her personal expenditure, but a parsimonious and slovenly house-keeper. Crippen's life with her must have been one long period of discomfort broken at intervals by outbreaks of violent disturbance.

It is not very surprising that he sought elsewhere the peaceful affection of which his wife was incapable, but for which he longed. He turned to his typist, whom he found an easy victim. She came from the lower middle classes; Crippen was her superior, and in her eyes a man of great education and of position. She was young, a gentle, affectionate girl, not unattractive, though anæmic and liable to neuralgia. She lodged with a Mrs. Jackson and inspired such mutual love in the mind of this woman that their relations soon ripened into the affection of mother and daughter. Sent out into the world at a tender age, condemned to earn her living in a

monotonous avocation and to spend her leisure in drab, uninteresting lodgings, it is not surprising that the opportunity offered by Crippen to this soft and ductile young woman proved a temptation which she could not resist.

By 1907 or 1908 she had become his mistress while remaining his clerk, but to a girl of her ideas there was a dreadful drawback—the union was unlawful. So long as Crippen's wife existed her relations with him could never be open and honest ; and to her respectability was a fetish. At times and seasons she fell intelligibly ill, and then her position caused acute anxiety. This worry and the fact that the wife was entitled to her paramour's society and affection aggravated her condition, and she was often wretched and ailing.

In 1905 the Crippens had moved to Hilldrop Crescent, a road in North London, where they lived in increasing discomfort. The wife's ambitions had definitely failed and she scarcely concealed her predilections for other men. By 1910 matters were reaching a crisis. At the beginning of February, Crippen announced that his wife had suddenly gone to America, and shortly afterwards he published the news of her death. On the twentieth of that month he went to a dance with Le Neve. It was a function which he knew would be attended by his wife's friends, and they noticed with disfavour that his companion was wearing a brooch belonging to his wife. At this time Crippen gave her a good deal of that lady's clothes and jewellery, some of which she presented to Mrs. Jackson. On 12th March, Le Neve took up her abode at Hilldrop Crescent, telling her people that she had become the house-keeper, and there she lived, but for a short holiday with Crippen at Dieppe in March, until July.

Mrs. Crippen's friends were not satisfied and talked the matter over, until at last their suspicions grew so grave that they communicated with the police.

Inspector Dew was entrusted with the inquiry and, on 8th July, went to Crippen's offices, and afterwards searched the house. At the office, Crippen met him with the greatest apparent candour. He said his wife had bolted with a man, and the story he had told was a lie to cover up a scandal. At the house, Miss Le Neve had received him frankly and placed no obstacle in his way. The inspection revealed nothing suspicious, and the matter would have probably dropped but for the murderer's panic.

On 11th July, Dew went to the office to make a trifling inquiry and found the bird flown. His suspicions reawakened. He went to the house, and found it deserted. For two days he searched, and then discovered what proved to be the remains of the miserable Elmore buried under the brick floor of the cellar.

He at once prepared a case for a warrant, which was issued on the 16th, and then came the question: Where were the fugitives? Their description was circulated and a great sensation filled the newspapers.

Dew knew that on 9th July, Crippen had disguised Miss Le Neve as a boy and had gone away, but where he did not know. They had, in fact, gone to Rotterdam and Antwerp under the name of Robinson, passing as father and son. On the 20th they sailed in the S.S. *Montrose* for Quebec.

The captain was attracted by the unusual caresses of the man for his apparent son, and at once perceived that the boy was a disguised woman. He had read of the missing couple and communicated by wireless. His ship happened to be fitted with that recent invention, which was still in its infancy. Their identity was quickly established, and the vessel proceeded with the two lovers dreaming of a future all gold, quite unconscious that they had been discovered and that the police were racing across the Atlantic to meet them. They were arrested, brought back and committed for trial.

Crippen was tried first. His case lasted a whole week. He was eventually found guilty and sentenced to death on 22nd October.

The trial had many noteworthy features which did not concern me, as they were not in any way part of my defence of Le Neve. The case will be for a long time the leading authority on the rule that a jury trying a charge of murder must not separate, for a jurymen who felt ill was taken by the jury-keeper into the courtyard for fresh air and then returned to his fellows. It was held that there had been no separation of the jury so as to invalidate the trial. The scientific evidence both as to the detection of hyoscine and the identification of the body by a small mark on a tiny piece of skin aroused great interest and controversy. The medico-legal aspect of the evidence is of the greatest importance to all experts and lawyers who may be concerned in similar cases in future.

To complete the story of Dr. Crippen. He appealed and

after the dismissal of his appeal, was executed, denying his guilt. His only thought was for Le Neve, and the only time that he broke down was on receiving her telegram of farewell the night before his execution. At his urgent request the letters that he had from her and her photograph were buried with him. He never ceased to declare her innocence and his love for her. In a statement made for publication he said: "In this farewell letter to the world, written as I face Eternity, I say that Ethel Le Neve has loved me as few women love men, and that her innocence of any crime, save that of yielding to the dictates of the heart, is absolute. To her I pay this last tribute. It is of her that my last thoughts have been. My last prayer will be that God will protect her and keep her safe from harm, and allow her to join me in Eternity. I give my testimony to the absolute innocence of Ethel Le Neve. She put her trust in me, and what I asked her to do she did, never doubting." He was at least a brave man and a true lover.

And now to return to Miss Le Neve. She had been charged with being an accessory to murder after the fact. For this purpose it is sufficient to explain that this charge would be satisfied by assisting Crippen to escape from justice knowing that he was a murderer. She was tried on 25th October, 1910, at the Old Bailey. Lord Alverstone was the presiding judge. Sir Richard Muir led for the prosecution and I led Mr. Barrington-Ward for the defence.

Sir Richard knew that he had not a certain case and, like a wily old campaigner, tried to put me in the position of proving that my client was not guilty. I saw the snare and declined to be caught. It is an elementary rule of English law that the prisoner has to be proved guilty. It is only when the evidence for the prosecution has established a case that the defence is forced to give an explanation. In my opinion the Crown did not prove their charge, and I took my stand accordingly. My attitude was abundantly justified by the summing-up and the verdict.

Sir Richard laid stress on these points. There were guilty relations between the two. About the date of the murder the prisoner, who had been looking ill and troubled, suddenly became very ill in a way which showed that she had been overcome with horror by a sudden shock. She had said that she was feeling her equivocal position, and that she could not

bear to think that the wife was living with her lover. This, said Sir Richard, must have been untrue, for the situation had lasted for years. Immediately afterwards she recovered her spirits and began to wear the dead woman's jewellery and gave her clothing to Mrs. Jackson. She attended the dance wearing the wife's brooch. She went to live at the house. She fled in disguise. She must have seen the newspapers at Antwerp. The only inference was that she had a guilty knowledge. What explanation had she to offer?

Now immoral life is no proof of complicity in murder, and I was able to establish that the illness so relied upon, in fact, occurred during Mrs. Crippen's lifetime, when she was visiting her friends. The mistake was due to Mrs. Jackson's haziness as to dates, but in cross-examination the fact became clear. I was also able to show that the recovery was about the date of the murder, and that it was due to Crippen having said that his wife was gone. He made this statement everywhere, and it is not wonderful that, with the suggestion of a divorce, Miss Le Neve recovered her spirits at the prospect of regaining not only respectability, but also of acquiring a status in life far above any she had ever dreamed of.

It is inconceivable that Crippen, who was taking the greatest pains to conceal the truth from the world, should have said to her in effect: "I have murdered my wife. Now come and take her place." In July, Miss Le Neve had frankly explained her position to Inspector Dew, and had said that she had first heard of Mrs. Crippen's death on her return from Dieppe. This again was the story which Crippen was spreading. Dew was satisfied at the time that she was telling the truth.

Then there was the flight in disguise, but this was sufficiently explained by her admitted knowledge. The police were making inquiries. Crippen was morbidly afraid of arrest. He had, so far as she knew, done nothing, but arrest meant certain ruin. No jury could be asked to draw the inference that the prisoner knew that Crippen had committed murder and was fleeing to avoid the just punishment of his crime.

Lastly I dealt with the suggestion that she must have seen the English newspapers at Antwerp. If they were available the prosecution could easily have proved the fact. There was cogent evidence that she had not seen them. At her arrest the captain asked her, not whether she had seen in the news-



FRANCIS BACON  
(After the painting by Paul van Somer )

*See page 387*



In mine private to the Thier late morning happened to  
 me on the contrary of my business more contrary to  
 my expectation then you be feeling in this respecting me  
 in the commission upon Francis late left to you  
 to us, now, & desire, no more fraud of you to be  
 should see if I were a judge in the Commission, etc.  
 the only fault you would do me might be  
 I for my point to you, I shall make to all the  
 not more to be seen if I see to be settled for to you  
 upon the able man for a one of me & to you  
 the only I will make no means to all the. On  
 the other side if I see to be any insufficient  
 object & to be under of to be to you and to  
 should my self double bond, to you to be  
 answer I can for my self, not I humbly  
 say to I may see to be to you, and  
 that you will not displease me for to be  
 to you. And so I commend you to God  
 in the name of the Lord Jesus Christ  
 your humble servant

Your humble servant  
 Francis Bacon

LETTER FROM SIR FRANCIS BACON TO LORD KEEPER PUCKERING

papers that their flight was discovered and that a warrant was out for murder, but whether she had not seen her father's letter in the newspapers. With her mind directed only to her parents, she replied that she had seen no newspapers since she left London. She had said that she knew nothing of the murder. Dr. Crippen had said so, too. There was no reason why he should entrust his guilty secret to her at the risk of losing her who was the prize that he hoped to gain. There were many reasons why he should not impart to any living soul a secret which might cost him his life.

I submitted that the case had wholly failed. The Judge's summing-up was a fair and judicial statement of the case, leaving no doubt as to the verdict, and shortly afterwards Miss Le Neve was acquitted by the unhesitating verdict of the jury.

Some readers may say: "Yes, but all that amounts to is that the evidence was not enough. For all that, she may have known." That is true within limits. Nevertheless, I am convinced that she was innocent in every sense of the word. I had the advantage of a close study of all the facts and circumstances of the case, including a great deal that was never in evidence. She was a girl whose character for truthfulness had never been questioned. She denied all knowledge of the crime, and I am convinced that she told the truth. I am fortified by the knowledge that the late Dr. Scott, who had charge of her during her detention for the weeks that elapsed between her arrival in England and her acquittal, shared my belief in her innocence.

Frail she was and of submissive temperament, but not an accomplice in murder nor an ally in its concealment.

I was told that after the trial she left for America. But I never heard of her again.



# *Ogden's Guinea Gold*



## OGDEN'S GUINEA GOLD

A GENERATION is now rising to whom the name of Ogden's Guinea Gold has no appeal. Yet there was a time when this brand of what were then termed "fags," and I believe are now called "gaspers," was known throughout the length and breadth of the United Kingdom. The causes of its rise to fame and sudden extinction remain vividly in my recollection; during four very important years of my professional life, from 1902 to 1906, hardly a day passed without my being engrossed in one aspect or another of the innumerable lawsuits brought against the Company.

When I was first retained in 1902 I was practising at Liverpool and my prospects were as bright as that of a "local" may well be. When the proceedings came to an end in 1906, I had been elected to Parliament and had "come to town," where I had acquired a substantial practice which bade fair to justify my applying for silk in the near future. Every young barrister dreams of being engaged in heavy litigation, but few can ever have had the fortune which came to me, at a time when I had only been called for four years, of being retained in an unprecedented series of actions arising out of the same events, and thus of gaining in a short space of time that indispensable knowledge and experience of practice and procedure which can only be acquired by a busy junior.

The cases in one form or another, including the applications made in the course of framing the issues to be tried and of preparing them for trial, came before the Courts on more than 1,200 occasions. The arguments before the House of Lords occupied four days; in the Court of Appeal twelve days; and no one ever computed the number of days of judicial time take up before the Judges of the High Court and the Masters. Nearly every one of the King's Bench judges heard at least one application in one of the

The Ogden litigation was the aftermath of a very serious struggle for the control of the tobacco trade in the United Kingdom. As is well known, the supply of tobacco grown here is negligible. Indeed, until very recently it was illegal to grow tobacco in this country. An Act of Charles II, passed to protect tobacco-growing in the North American colonies, had escaped attention after the War of American Independence, and English agriculture was forbidden to compete with the tobacco-growing of an independent State. For cigarettes, and, to an even greater extent, for pipe tobacco, the United States are the chief source of supply, though the industry has become in some of the Colonies an extremely important one and will be still more so in the future.

Imported tobacco is subjected on its arrival in this country to certain processes of manufacture, and the resultant cigarettes and pipe tobacco are marketed with retailers from whom the public obtain their supplies. Although there are wholesalers, the marketing is frequently done entirely by the factory dealing direct with the retailer.

As the trade had been organised and developed, there were at the opening of the twentieth century a number of manufacturers who had built up their business independently and were keen rivals. Retailers dealt with such of them as they thought fit, according to the requirements of their customers. There had been a tendency for the manufacturers to draw closer together, but this movement had not proceeded far when an American "combine" began to challenge the British manufacturers for control of the trade in the United Kingdom.

One British firm, Ogden Brothers, Limited, of Liverpool, which had long been engaged in the trade and enjoyed a local reputation, had begun to push the sale of their "Guinea Gold" cigarettes. These were similar in quality and identical in price with Wills' "Gold Flake." These cigarettes were being extensively advertised, and by reason of their success the Company's trade expanded all over England. It was rapidly achieving a position rivalling that of the biggest firms, and the challenge naturally brought about a marked increase of competition. The American "combine" acquired a controlling interest in Ogdens, and with their advent began a cut-throat competition instituted with a view to driving competitors out of business.

The trade device of selling goods at a great loss in order to compel rivals to follow suit and thus ruin themselves, in order that in the end the firm which can last longest gains the whole market, and can recoup itself by increasing the prices almost at its pleasure, is extremely well understood in America, and not unknown in this country. In the tobacco war to which I am referring, neither party had much to learn from the other when once the affair had been organised. One effect was to precipitate the amalgamation of British firms, and the Imperial Tobacco Company was formed, in which were merged most, but not all, of the British manufacturers. The Imperial Company at once accepted the challenge, and took vigorous measures to meet the threat to its business.

In this country, tobacco retailing is a free business. It is true that an excise licence is required, but the conditions are such and the duty so small, that almost anyone can commence retailing tobacco when and where he pleases, subject of course to the laws regulating the keeping of shops. When a trade is so open, it is impossible to control it by a "tied house" system, and the contending parties were necessarily driven to bidding against one another for the custom of the retailers. Price-cutting became general, and never before or since has the smoker in this country enjoyed such cheap tobacco. Mere cheapness, however, is not too attractive to a retailer. It does not directly increase his profits and there is a limit to the amount of tobacco that the public may require. Price-cutting may even diminish retailers' profits. Both parties therefore were soon driven to make direct pecuniary offers to retailers, the benefit of which would not be passed on to their customers.

In March, 1902, the Imperial Company stole a march by offering a share of its profits and a bonus of £50,000 to such retailers in the United Kingdom as would sign an exclusive contract to deal only with it. If this met with reasonable success, the Company was ensured a market which could not be captured by its rivals while the contracts were running. The Americans had to take immediate steps to frustrate this plan, and accordingly Ogdens telegraphed to the retailers all over the country not to sign the contract but to wait for their circular. A very large number did so, and in due course received a printed communication in these terms :



## BONUS DISTRIBUTION.

OUR ENTIRE NET PROFITS AND £200,000 PER YEAR FOR THE NEXT FOUR YEARS.

"Commencing 2nd April, 1902, we will, for the next four years, distribute to such of our customers in the United Kingdom as purchase direct from us, our entire net profits on the goods sold by us in the United Kingdom.

"In addition to the above, we will, commencing 2nd April, 1902, for the next four years, distribute to such of our customers in the United Kingdom as purchase direct from us, the sum of £200,000 per year."

The circular next provided that the proportion was to be ascertained by the amount of each customer's purchases for the year, and the £200,000 was to be divided quarterly. It ended: "To participate in this offer, we do not ask you to boycott the goods of any other manufacturer." This last clause was a telling one. To side with the Imperial Company might bind retailers hand and foot, if that Company drove out all rivals. The retailers were interested in maintaining the competition.

Such an offer, therefore, could not fail. Many hundreds of retailers decided not to sign the Imperial Company's contract. Many wrote to Ogden's accepting the offer. Many merely went on dealing with them. The war continued, and the competition became fiercer than ever.

In July, 1902, the first instalment of £50,000 for the first quarter of the first year under the Ogden scheme was duly distributed; but when October came, there was nothing for the retailers. The war had come to an end in September. The American invaders had realised at last that ultimate success was improbable, and they had had to face the British Company's competition in the States, for the latter had not been blind to the wisdom of carrying war into the enemy's camp. The fact that the main supply of unmanufactured tobacco was in the United States proved no obstacle to the British Company, which had taken effective steps to secure uninterrupted supplies. Both contestants also perceived that the struggle would be a very long one and that its continuance merely meant that manufacturers would make no profits.

Eventually terms were agreed, whereby each party returned to its own country.

One term of the settlement consequently was that the Ogden Company should be transferred to the British Company. It had served its purpose and was in October, 1902, put into voluntary liquidation.

This was thought at first to have put an end to the retailer's rights under the circular. There had been no profits up to September, and in future no one would be dealing with the Ogden Company either directly or otherwise. Naturally, this point of view was not shared by the retailers. When the liquidator sought to collect the Company's debts, the customers declared that the damages they claimed for breach of contract must be taken into account, and the result would be that it was the Company that owned them money.

Here was a deadlock which only litigation could remove. Not only did the retailers resent losing the gains they had been promised, but they realised that for the future they would be compelled to deal either with the great combination or with the few manufacturers who had not joined in it but might not be able to withstand its competition. While the manufacturers were fighting for control, each side had courted the retailers. As soon as they agreed, the need for offering undue facilities ceased, but the courting had, so the retailers thought, been abandoned rather too hurriedly. This increased the heat that had been engendered.

As each debt gave rise to a separate action, there were soon hundreds on foot, all with the object of obtaining money from Ogdens.

The Company naturally claimed that it was at liberty to cease to do business at any time, and there certainly were words in the circular which indicated that distribution depended upon actual dealings. Unless such dealings took place, the division became impossible. The retailers contended that there was a hard and fast contract for four years, and that, though they could not make Ogdens continue in business, if the Company by choosing to shut down could not fulfil the contract, then so much the worse for the Company. The contract, they said, was thereby broken and they were entitled to heavy damages. Until this difference of principle had been finally decided by the law in favour of one or the other, there was small prospect of any compromise being effected.

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One term of the settlement consequently was that the Ogden Company should be transferred to the British Company. It had served its purpose and was in October, 1902, put into voluntary liquidation.

This was thought at first to have put an end to the retailer's rights under the circular. There had been no profits up to September, and in future no one would be dealing with the Ogden Company either directly or otherwise. Naturally, this point of view was not shared by the retailers. When the liquidator sought to collect the Company's debts, the customers declared that the damages they claimed for breach of contract must be taken into account, and the result would be that it was the Company that owned them money.

Here was a deadlock which only litigation could remove. Not only did the retailers resent losing the gains they had been promised, but they realised that for the future they would be compelled to deal either with the great combination or with the few manufacturers who had not joined in it but might not be able to withstand its competition. While the manufacturers were fighting for control, each side had courted the retailers. As soon as they agreed, the need for offering undue facilities ceased, but the courting had, so the retailers thought, been abandoned rather too hurriedly. This increased the heat that had been engendered.

As each debt gave rise to a separate action, there were soon hundreds on foot, all with the object of obtaining money from Ogdens.

The Company naturally claimed that it was at liberty to cease to do business at any time, and there certainly were words in the circular which indicated that distribution depended upon actual dealings. Unless such dealings took place, the division became impossible. The retailers contended that there was a hard and fast contract for four years, and that, though they could not make Ogdens continue in business, if the Company by choosing to shut down could not fulfil the contract, then so much the worse for the Company. The contract, they said, was thereby broken and they were entitled to heavy damages. Until this difference of principle had been finally decided by the law in favour of one or the other, there was small prospect of any compromise being effected.

The first two cases that came on for trial were actions instituted by the liquidator to recover debts claimed by the Company against two retailers named Nelson and Telford. As only the figures differed, I will confine myself to Nelson's case. He owed the Company £58 for goods supplied and refused to pay, because he claimed that his damages exceeded that sum. The actions were heard in 1903 before Lord Alverstone, the Lord Chief Justice.

The root of the matter lay in the decision as to the true meaning of the contract. Were the Company in effect contracting to stay in business for four years so that the divisible profits and the £800,000 could be properly apportioned in the way stated in the circular? After much legal argument and citation of authorities the Lord Chief Justice held that there was such an obligation. True, the Company was entitled to discontinue, but only at the price of compensating the retailers. On the question of damages, the retailers were not so successful, as half the claim disappeared when the Judge held that there was no evidence of any reasonable prospect of the Company earning profits during the four years and awarded nothing for Nelson's chance of sharing the profits. On the other claim for failure to pay him his proper share of the £800,000 the damages were assessed at £70. As Nelson had admitted the Company's claim for £58, the result was that he was held to be the Company's creditor for £12. Telford's case had a similar result. The Judge's reasoning made it fairly certain that any retailer who came under the circular could safely refuse to pay his debt to the Company, because on balance he would by his damages come out on the right side.

A retailers' association had been formed to support the retailers' claims. For convenience this association was registered as a limited company. Once a victory had been secured writs poured in on the Company by hundreds. Altogether about £700,000 damages were claimed in nearly 800 actions. I was almost overwhelmed by the number of cases in which I had to consider what defence the Company should put up. The claims were similar, but not all alike. Some had no case; others but a shadowy one; and there were many differences arising on the facts peculiar to each claim, all of which had to be considered carefully. As soon as defences were delivered there were hundreds of applications made for the permission to amend the defence and preparing for trial.

While these new actions were being commenced, the judgments already obtained by Nelson and Telford were being taken further. In 1904 the appeals came on before the Court of Appeal. The arguments were considered by the Master of the Rolls (the late Sir R. Henn Collins, afterwards Lord Collins) and the late Lord Justices Romer and Mathew, and the appeals were dismissed. The matter was then taken to the House of Lords and the appeals came on in March, 1905. Mr. Asquith (now Earl of Oxford) and Mr. Rufus Isaacs (now the Marquess of Reading) led Mr. Hemmerde and myself for the Company and Mr. (now Lord Justice) Bankes led Mr. (now Judge) Randolph for the retailers. After a further argument, the judgments were again upheld, and the construction of the contract was authoritatively determined in the sense contended for by the retailers.

The decision, however, could not end the litigation. In every one of the remaining cases two issues had to be decided : first, whether the particular claimant had any claim on the Company at all ; and, secondly, what was the amount of damages he should have if he succeeded in his claim. Obviously, however, the issues had been considerably simplified. For some time longer the actions were pressed ; but eventually wiser counsels prevailed.

There were two considerations, in addition to the failure to obtain damages for the loss of the promised share of profits, which considerably affected the retailers' dreams of substantial gains. One was that the costs were heavy. The other was that in the winding up of a company, the creditors could only obtain payment out of the company's assets. These, however, were subject first of all to the liquidators' costs and charges, so that in effect the litigation was carried on at the expense of the retailers, since it was obvious that the assets would not permit payment of the creditors in full. With all these actions coming on for trial, it was quite on the cards that, when the liquidator had taken his costs of fighting them, the surplus assets might even be exhausted, so that the retailers would be left with judgments of no value to them, and would have spent their money for nothing. It was wiser to take what they could get before the money was all gone. Otherwise, they would have paid dearly for providing a new illustration of the fable of the lawyer and the oyster. On the other hand, the Imperial Company realised that the retailers were essential

to their business and it was important not to render future business relations impossible. There were still a number of manufacturers who had stood outside the amalgamation and consequently a retailer could always obtain supplies.

Considerations of this kind always appeal, sooner or later, to business men, and negotiations were opened with a view to a comprehensive settlement. After all, the actions were only the clearing-up of the tobacco war, which was over and could not break out again, and all branches of the trade had to readjust themselves to altered conditions. The negotiations were necessarily very complicated and took much time and anxious thought before they reached a successful conclusion. Eventually, on 19th September, 1906, they were brought to an agreement and the trade settled down to new and amicable relations with each other.

The chairman of the Retailers' Association celebrated the consummation of these efforts by presenting to all those engaged in the litigation a souvenir, illustrated by portraits of the Judges, Counsel and others who took a prominent part in these events. A copy of this hangs in my old chambers to this day, a memorial to four years of hard work which materially assisted my advance in the profession. Soon after the settlement, I was given silk and took my place within the Bar.

## *Marie Antoinette*





## MARIE ANTOINETTE

"IT is now sixteen or seventeen years since I saw the Queen of France, then the Dauphiness, at Versailles; and surely never lighted on this orb, which she hardly seemed to touch, a more delightful vision. I saw her just above the horizon, decorating and cheering the elevated sphere she just began to move in—glittering like the morning star, full of life and splendour and joy. Oh, what a revolution! and what a heart I must have, to contemplate without emotion that elevation and that fall! . . . Little did I dream that I should have lived to see such disasters fallen upon her in a nation of gallant men, in a nation of men of honour, and of cavaliers. I thought ten thousand swords must have leaped from their scabbards to avenge even a look that threatened her with insult—but the age of chivalry is gone."

When Burke wrote these lines the worst had not happened. He did not know then that Marie Antoinette would be hurled into a noisome cell, her husband and her child taken from her, and herself brought to trial and condemned to public execution. Since that day the French Revolution has faded into the mists and forgetfulness of a century; the Queen's fate has been obscured by a cult of veneration for the successful Revolution; and it is only in our own day that we have learned, from the not dissimilar fate of the late Empress of Russia, to understand the true horror of her fate.

History never exactly repeats itself. Yet the historian may trace a curious succession of similarities between the fates of Marie Antoinette of France and of Alexandra Feodorovna of Russia. Each came from a foreign land, and each in her time of suffering was reproached for her alien origin. The taunt of "the Austrian" was hurled against Marie; in the last months of her reign Alexandra was sneered at as "the German." The official life of each began under the ill-omen of a public disaster; the marriage of the Dauphiness of France, like the coronation of the Empress of Russia, was darkened by a panic among the crowd who had gathered for the festivities, and by the loss of many lives. Each Queen,

as she grew to power, knew her husband good-natured but weak, and easily led into error. Each waited long and eagerly for the birth of an heir who should re-establish the dignity and glory of the throne. Each was thoughtless, perhaps haughty, making more enemies than friends. Each saw the tide of revolution rise above the steps of the throne; each thought to save her husband from the compromises which invited overthrow. Each saw the inevitable end approach; and at last each was foully slain, far from friends and hope of salvation, by a heartless mob which took revenge for defeat in the field by slaughtering its pitiable hostages.

There is no need to trace the parallel further. But, before I describe the trial of Marie Antoinette, it may be well to summarise the events which brought her to this plight.

Marie Antoinette was the daughter of Maria Teresa, Empress of Austria. Her mother designed her from infancy to be the wife of the Dauphin of France, the grandson of Louis XV. An innocent pawn in this diplomatic game, the child saw her name and her education gallicised, and when she came to France, in 1770, at the age of fourteen, she was as much French as Austrian. The journey to Paris was a triumph. Deputations, arches, welcomes of every kind greeted her. Four years after her marriage to her fifteen-year-old husband, the old King died, and Marie Antoinette became Queen. The story of her short and troubled reign need not be told here, except to say that by 1789 the financial position of France was desperate and the States-General had to be convened to save the situation. Louis's gradual acquiescence in the new regime, the growing discontent of the Revolutionaries, and the fall of the Bastille infinitely weakened the authority of the Court; its prestige declined through the affair of the Diamond Necklace and the scandal surrounding the production of Beaumarchais's comedy *The Marriage of Figaro*. Clouds gathered over the noble Palace of Versailles, where the King and Queen had their residence. A last gleam of light shone through when, at the end of September, 1789, the officers of the Royal Bodyguard entertained the officers of the newly-arrived Flanders Regiment and of the Versailles National Guard at a banquet in the Palace. Patriot cries were raised; the officers sang a Royalist song:

"O Richard, O mon roi,  
L'univers t'abandonne . . ."

Toasts were drunk ; the white cockade of Royalty was thrust into the newcomers' hats, and the tricolour cockade thrown to the floor ; the King and Queen walked round the horse-shoe table with their infant son ; and afterwards men climbed the walls to kiss Louis's hand as he stood on a balcony. One of them, too clumsy or too far gone in drink, sought to kill himself for his failure in this feat.

Whatever satisfaction this demonstration afforded the Queen, it infuriated the Revolutionary leaders. They led a procession from the Parisian slums down the long road to Versailles, and early one morning rioters broke into the Queen's apartments. She fled to the King's wing, while her guard was slaughtered at her door. This was her first contact with the Revolutionary mob. Lafayette, a sort of military Kerensky, recommended moderation and conciliation, and the King agreed to transfer his Court to Paris. Marie Antoinette, more far-sighted, begged him that, next time such a riot occurred, he would fly rather than place himself in his enemies' hands. He did not reply.

Fly they did, however, twenty months later, from the Tuileries, where their Court had become a mere mask for their captivity. They slipped out in disguise at midnight, and were driven by a few faithful friends along the high road towards Metz, where the Army of the East, still maintaining a semblance of discipline, might have protected them. Their plan was ill-laid, its execution muddled. A chance recognition, and the headlong pursuit of a Revolutionary postmaster named Drouet caused its failure, and the Royal party was brought back under escort to Paris. When Marie Antoinette alighted from the carriage, it was seen that her auburn hair had turned white.

Although the King and Queen were prisoners, they were not yet deposed. Most of the popular representatives still shrank from the idea of a Republic. But everything went wrong. When a petition for the deposition of Louis was exposed for signature in the Champ de Mars and the National Guard was compelled to fire on the mob, its victims were acclaimed as martyrs of the Royal tyranny. Then the Assembly decreed sentence of death and the confiscation of their property upon all nobles who had fled the country and refused to return ; Louis, as was his right, vetoed this decree. A few weeks later the Assembly repeated its claim that every priest must abjure

the authority of Rome and submit himself to the civil authorities ; again Louis refused his consent. The Revolutionaries, to discredit the King and Marie Antoinette, demanded war with Austria. Louis dared not refuse, and himself proposed the declaration of war to the Assembly. The failure of the French troops destroyed the authority of the Assembly ; the extremists took the lead and the Royal apartments in the Tuileries were once more invaded. The Queen and her children took refuge in a corner of a room behind a large table ; she was compelled to thrust a dirty red Revolutionary cap on the Dauphin's head, but her brave bearing and the King's passive courage saved them from hurt.

Worse followed. During the next month the Duke of Brunswick, heading the allied forces of Austria and Prussia against France, published a manifesto announcing his intention to restore the Royal authority in France, and threatening "unforgettable vengeance" on the Assembly and Paris should Louis be harmed.

This blow was shrewdly parried by the Commune, which, to prevent a division of the Revolutionary forces, sought to inculcate them all in the guilt of the overthrow of the monarchy. It organised another assault upon the Tuileries. The King had perhaps six thousand men to guard him (so Napoleon, who witnessed the scene, estimated) ; probably the invaders were fewer. Among these, however, was the famous detachment of men from Marseilles, five hundred strong, who had reached Paris, bringing with them the stirring song which has ever since been associated with their country. They forced the gates which led from the Place du Carrousel into the courtyard of the Palace. Napoleon said, long afterwards, that if the King had shown himself on horseback to his defenders the day would have been saved, and a "whiff of grapeshot" would have sufficed to disperse the mob. But Louis, with that fatal weakness which dogged his career, as a century later it destroyed the last of the Romanovs, sought a peaceful outcome. With the Queen, their children and the governesses, he made his way to the Assembly, and, as a pathetic gesture of unity with the new regime, put himself under its protection. The astonished demagogues crowded him and his party into the reporters' box, where they heard the boom of cannon and the roar of voices as the forces met in the courtyard of the Palace.

One of his ministers wrote out an order to cease fire, which the King signed ; it was handed to the commander of his troops. The mob had conquered, and the monarchy was lost. The Assembly suspended Louis from his office as king, and the Royal fugitives took refuge in the monastery of the Feuillants, the headquarters of the Girondins.

After three days of listening to the dull deliberations of the Assembly, they were transferred to the gloomy tower of the Temple. They were prisoners.

Just as the better side of Nicholas II and of his Empress was displayed in captivity, so now Louis and Marie Antoinette, as day after day went by, gained the respect of their guards. They waited for release ; their hopes lay in the armies of Austria and her allies. When the invaders took Verdun, the Revolutionaries, balked of success in the field, again sought revenge. They threatened the prisoners with death. The Queen's dearest friend, the Princess de Lamballe, was torn to pieces by the crowd, and, after unspeakable outrages, her head was thrust on a pike and held at the window of the fainting Queen. More than fourteen hundred aristocrats were massacred. By the end of the year Louis was tried and sentenced to death ; a month later, in January, 1793, he was guillotined in what is now called the Place de la Concorde.

Marie Antoinette's seven-year-old son, the Dauphin, was taken from her and brutally used. She was left in increasing misery and suspense with her daughter and the noble Princess Elizabeth, her sister-in-law. The assassination of the insane leper Marat and the failure of the Revolutionary armies again set the Parisians in earch of victims ; they decided to try the Queen. On 2nd August, 1793, she was ordered to leave her two companions and accompany her guards to the Conciergerie, a prison on one of the islands in the Seine. As she left the room, she struck her head against the door. Asked if she was hurt, she replied sadly : " Nothing can hurt me now."

In the Conciergerie she was imprisoned in a semi-subterranean cell, so fetid and damp that her dress rotted into rags. One of her eyes, long ailing, lost its sight. Her face grew thin and sunken ; only the flush of fever made a red patch on her pale cheeks. She was deprived even of her needles ; every insult was heaped on her. Yet even in this dreadful place she was so gentle that she won the hearts of all but the most degraded of her custodians. Sympathisers who

sought her rescue found ready accomplices among her gaolers ; but their plans were too clumsy to succeed.

In August, Fouquier-Tinville, the Public Prosecutor, wrote to the President of the National Convention, pointing out that the Press and the public complained of the delay in bringing the " former Queen " to trial, and demanded instructions. Immediate steps were taken. She was examined in secret by her accusers in regard to the charges which they proposed to bring against her. Her courage was still high. Asked whether she had not taught her husband to deceive the people, she replied : " The people was deceived, cruelly deceived. But not by my husband or by me." And again, in answer to the taunt that she had wished to reign no matter at what cost, and to reascend the throne over the dead bodies of patriots, she said : " We had no need to reascend the throne ; we were seated upon it. We desired nothing but the good and happiness of France."

On 14th October her trial began, and she was led into the Court above her cell. Broken, ill, half-blind as she was, her mien still retained something of its old majesty. She wore a simple black gown, with a large white scarf tied beneath her chin, and on her head a white widow's cap with black crepe under its lappets.

Her judges were four, headed by a certain Hermann. The jury was packed ; it contained only known extremists, except for a mad surgeon named Souberbielle. Marie Antoinette was given two counsel to defend her, but they were warned of this task only overnight and had barely time to consult her before her agony began.

Hermann asked her formally her name, age, condition, birthplace, and her residence at the time of her arrest. She declared that she was Marie Antoinette Lorraine of Austria, aged about thirty-eight (she was actually thirty-seven), the widow of the King of France, and born at Vienna ; at the time of her arrest she was in the National Assembly. Fouquier read out a long accusation against her, in which the principal charges were that she had squandered " the finances of France, the fruit of the sweat of the people, to satisfy her immoderate pleasures and to pay the agents of her criminal intrigues " ; that she had sent subsidies to the Emperor of Austria and that she had, since the Revolution, had intrigued with counter-revolutionary and foreign Powers against France ; that she had

authorised the anti-national incidents at the dinner of the Guards and the Flanders Regiment at Versailles; that she had brought about a famine in Paris; that she had planned "the horrible massacre of most zealous patriots" in the Champ de Mars; that she had inspired Louis to veto the decrees against the emigrants and the priests; and that *she had committed incest with her eight-year-old son.*

The Queen was given a chair, and it was observed that she, who in her childhood had played duets with Mozart, rested her hand on it and moved her fingers as if on the keyboard of a piano.

The first witness was called. He was a deputy who told a long, rambling story of events leading up to the Revolution, especially at Versailles. When he finished, Hermann asked Marie Antoinette for her reply. She said: "I have no knowledge of most of the facts of which the witness speaks. It is true that I gave two standards to the National Guard at Versailles. It is true that we walked round the table on the day of the Guards' dinner. That is all."

Hermann, as Presiding Judge, such being the French custom, pressed the charges against her. Was she in the room when *O Richard, O mon roi*, was played? "I do not remember it," replied the Queen. Was she there when the toast of "The Nation" was proposed and rejected? "I do not think so." Did she not call upon the forces at Versailles to defend the Royal prerogative? "I have nothing to reply." Had she not held secret councils before the Revolution to consider means of sending funds to the Austrian Emperor? "I have never been present at any secret council."

Question after question was put to her, to all of which she answered firmly and with discretion. Not one of her answers betrayed confusion of thought or manner, nor did she compromise a single friend. So it was to be throughout this trial.

A second witness deposed to the flight to Varennes. In his questions to the Queen, Hermann sought to make her disclose the name of a woman who assisted her flight. "I do not remember."

A third witness, who claimed to hold the fact from "a good citizeness and excellent patriot who was a servant at Versailles under the old regime"—such was the quality of evidence proffered!—deposed that many bottles, full and



empty, were found under the Queen's bed after the Guards' dinner. The Queen replied that she knew nothing of this.

The next witness was Hébert, the infamous "Père Duchesne." He reported an examination in prison of the young Dauphin in which, he claimed, the latter gave a list of thirteen persons who brought his mother news in the Temple during her imprisonment, and also confessed to incestuous relations with her, to which he added other equally disgusting charges. Marie Antoinette, called upon to reply, said she could not remember anything about the people who were supposed to have assisted her.

Hébert added that he had forgotten something : after the King's death the Queen and her sister-in-law had treated the little boy with Royal deference, giving him precedence at table and seating him in the highest place.

"Did you see this?" interrupted Marie Antoinette.

"I never saw it," Hébert admitted, "but all the municipality will certify it."

One of the jury, more foul-minded than the others or more in league with Hébert, reminded Hermann that the Queen had made no reply to the charges brought against her in relation to her son.

Hermann told her to speak. Much moved, she cried : "If I did not reply, it is because nature refuses to answer such a charge brought against a mother. I appeal to all mothers who may be in this room."

It is said that this response called forth the sympathy of even the hardened wretches who had assembled to gloat over her sufferings. For a moment it seemed as if she might escape the flimsy net which had been cast about her, and gain her acquittal, or, at least, be sentenced only to exile and not to death. When Robespierre, her bitterest enemy, heard that day at dinner of the incident, he hurled his plate to the ground, exclaiming that the Queen had been saved by Hébert's stupidity.

Two more witnesses spoke of the flight to Varennes, not the least substantial of their accusations being that, on her return to the Tuileries, Marie Antoinette had "cast a most vindictive glance at the National Guard of her escort and at other citizens within sight, which made me think at once that she would revenge herself; and, in fact, some time afterwards the affair in the Champ de Mars took place."

A dozen other witnesses gave evidence neither more nor less serious than this.

From eight in the morning until three o'clock the Queen was kept without rest or refreshment in the stuffy Court. Then she was taken to her cell for a short breathing-space, before being brought back to torture for another six hours.

When, at last, she was supported to her cell in the middle of the night, she was heard to mutter : " I cannot see . . . I have come to the end."

Early next morning the cruel farce began again. One of the first witnesses was the Admiral D'Estaing. He had been no friend of hers in pre-Revolutionary days, but, in reply to a question about what he overheard in the Palace at Versailles before the mob's march from Paris, he said : " I heard some councillors tell the accused that the people of Paris were on their way there to massacre her, and that she must go away. She replied to this with great dignity : ' If the Parisians come here to assassinate me, they will find me at the feet of my husband ; but I will not fly.'"

Marie Antoinette broke in to confirm this, and Hermann quickly turned the examination to other points.

After D'Estaing came Simon, the obscene cobbler who had been appointed guardian to the Dauphin. He declared that " the little Capet " had confessed to him the names of men who were helping the prisoners in the Temple ; he deposed also that the child was treated with Royal dignity by his mother and his aunt. He was asked no questions on the disgusting accusation made by Hébert : probably Robespierre had warned his fellow-extremists of the weakness of this line of attack.

There was a pathetic interlude when a packet, which Marie Antoinette had sealed when she was transferred from the Temple to the Conciergerie, was opened. The Clerk of the Court announced its contents :

" A packet of hairs of different colours."

" They are my children's, dead husband and living, and my husband's."

" Another packet of hair."

" The same."

" A paper with numbers on it."

" A table to teach my son to count by."

"If," he said, "they were not free men who fill this chamber, and who, therefore, are conscious of all the dignity of their being, I should perhaps remind them that, at the moment when the national justice is about to pronounce the law, reason and morality command them to display the greatest calmness; that the law prohibits any sign of approbation; and that an individual once overtaken by the law, though guilty of no matter what crime, belongs now only to misfortune and humanity."

The Queen was brought back and Hermann told her that the jury had found her guilty. "Antoinette," he said, "this is the declaration of the jury." He read it, and Fouquier demanded the death penalty. Hermann asked if she had anything else to say. Whatever hopes she may have had—and she must have hoped, for she knew that none of the charges against her had been proved—she bore herself with courage, shaking her head in answer to Hermann's question. The latter pretended to consult his colleagues, and passed sentence of death.

Marie Antoinette was led to the condemned cell, where she called for pen and paper. She wrote a long, brave letter to her sister-in-law, the Princess Elizabeth:

*It is to you, my dear sister, that I write my last letter. I have just been condemned, not to a shameful death, for it is only shameful for criminals, but to rejoin your brother. Being, like him, innocent, I hope to display the same firmness which he showed in his last moments. I am as calm as are those whose conscience is free from reproach; I regret profoundly that I must leave my children. You know that I have lived only for them. . . .*

*Let my son never forget his father's last words, which I expressly repeat to him: He must never seek to revenge our death. . . . I forgive all my enemies the evil they have done.*

The letter ended with the words:

*My good, loving sister, may this letter reach you! Think of me always: I embrace you with my whole heart, and those poor dear children. Oh God, how heart-breaking it is to leave them for ever! Farewell, farewell!*

and with the Queen's pious declaration that she would not accept the last consolations of religion from a forsworn priest. The writing was blurred with tears.

It never reached the woman to whom it was addressed. Fouquier came into possession of it; Robespierre, the "incorruptible," begged or stole it from him and concealed it, with other documents likely to be valuable, under his bed. At last, in 1816, after twenty-three years, a Revolutionary who had acquired it sought to win his pardon by disclosing it to the restored Bourbons. By that time the Princess was dead; and Marie Antoinette's daughter swooned when the yellow, tear-blotted relic was placed in her hands.

When she had ended her writing, the condemned Queen flung herself, weeping bitterly, upon the bed. Two hours later, at seven o'clock in the morning, the girl who cared for her in her last hours begged her, since she had eaten nothing for so long, to taste some soup she had kept warm for her. "My child, I need nothing more in this world. All is over," answered the Queen; but, when the girl brought the soup, she tried to please her by swallowing one or two spoonfuls.

She prepared herself for the end, changing her shift for a clean garment, half-screened by the girl from a leering warder who refused to avert his eyes.

Soon Hermann and his jackals entered her cell and formally confirmed her sentence. Sanson, the executioner, followed and sought to bind her hands. "Why must you bind me?" asked the Queen. "The King's hands were not bound." But the man would take no denial.

Before he bound her, however, he cut off her white hair. Her hands were tied and she was led to the tumbril which waited outside the prison to carry her to the scaffold. The crowd howled at her. An insane Revolutionary, mounted on a horse, shrieked insults and waved a sword at her, but she sat silent, pale and erect, refusing to speak to the Constitutional priest whose cloth she would not recognise.

It is said that when, among the cruel, yelling mob, a little child in its mother's arms blew her a kiss, she flushed, and her weary eyes filled with tears.

For a moment her composure faltered when she saw the guillotine set up in the crowded square, but she conquered her weakness and firmly mounted the scaffold. She threw a last look at the Tuileries gardens. It was noon. One of the executioners tore her bonnet from her head and hurled her to the plank. A moment later Sanson exposed her severed head to the crowd.

There is little point in examining whether or not Marie Antoinette was "guilty." She hated the Revolution which had torn her husband and herself from the throne and flung them—and their country—into the hands of an insane mob. France, to her, represented not the Revolutionaries who tried her, but those forces who sought to destroy the Revolution and restore the monarchy. In this sense, then, she could not be guilty of treachery to France. But if, on the other hand, one considers the Revolutionaries as the representatives of France, and any acts undertaken against them as treachery to the nation, then it cannot be denied that she was guilty of some of the charges brought against her.

Marie Antoinette was sacrificed, as was the Empress Alexandra a century and a quarter later, to the vengeance of cowardly fanatics, who sought by her death to terrorise her sympathisers, to revenge themselves for failure, and to inculcate the whole people in their own bloodthirsty crimes. The trial itself, as we have seen, would have been farcical, were it not so tragic. The witnesses proved none of their charges; they merely repeated, as by rote, the vulgar gossip against an unhappy woman. Practically all the matters to which repeated reference was made during the proceedings—the Guards' dinner at Versailles, for example; the alleged secret councils, and the horrible accusations of incest—were ignored by Hermann when he put his questions to the jury. The Queen's death had been decreed before ever she was brought into the Court.

Of her accusers, we note with pleasure, few survived her long. Hermann and two of the three other judges were guillotined by their fellow-Revolutionaries barely eighteen months after their Royal victim. Fouquier met the same fate on the same day. The loathsome Hébert, Simon, and two of the jury preceded them to the scaffold.

*Charles Peace*



## CHARLES PEACE

**F**EW names in the annals of crime are better known to the public than that of Charles Peace, whose effigy was for so long a principal attraction in the Chamber of Horrors at Mme Tussaud's exhibition of waxworks ; though it is doubtful if many who familiarly refer to him as an arch-criminal could place the date of his trial within ten years. He was in fact tried for shooting at a Blackheath policeman with intent to murder in November, 1878, under the name of John Ward ; the discovery that he was the man for whom the police had been searching for two years for the murder of Arthur Dyson, at Banner Cross, near Sheffield, led to a further trial in February, 1879. He was found guilty, and was hanged on 25th February, 1879.

What has made the name of Charles Peace so notorious was not merely the crime for which he was executed, but other curious incidents of his career. Another man was sentenced to death for a murder of which Peace was guilty, the latter being present in Court during the trial. He was able on many occasions to escape detection by amazing powers of disguise and consummate daring. His nature was a curious mixture of sordid villainy and artistic tastes. He really loved music, and when he broke into a house—a very frequent habit with him—he could not resist taking violins and other instruments among his booty. Mr. Sherlock Holmes was accurate in saying, as we are assured he once did, that “ my old friend Charlie Peace was a violin virtuoso.”

It will be convenient to take the three principal trials in which Peace was concerned—though in the first he was not in the dock—in chronological order. The first was that of John and William Habron (or Hebron), at Manchester, in November, 1876, before Mr. Justice Lindley. The two brothers, aged twenty-three and eighteen respectively, were charged with murdering Nicholas Cock, a policeman, at Whalley Range, near Manchester, on the night of 1st August. They were Irish labourers who were employed by a nurseryman in the

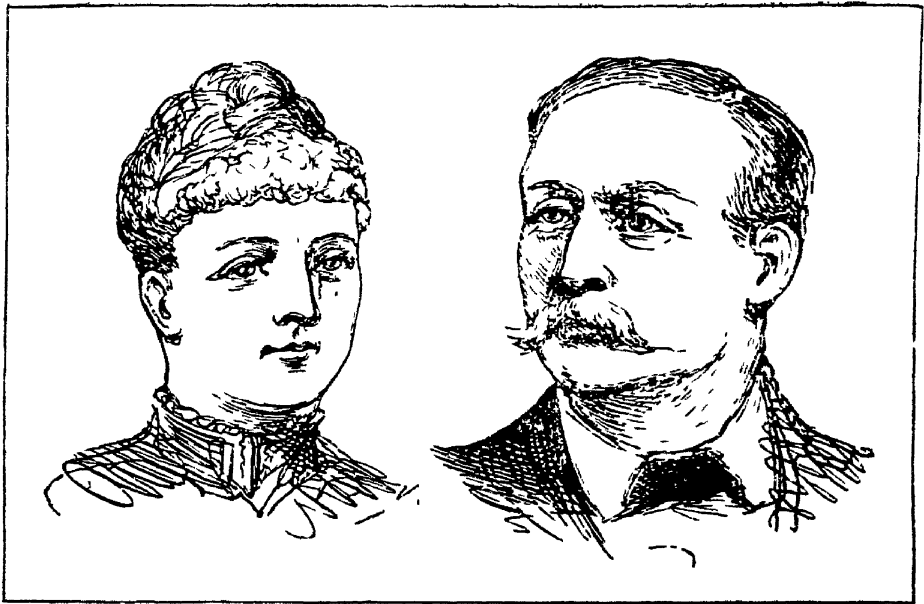


neighbourhood and slept in an outhouse on his premises. In July Cock had summoned them for being drunk and disorderly; William was fined on 27th July and the charge against John was dismissed on 1st August. That night Cock was going his rounds with another policeman when they saw a man loitering suspiciously near the gate of a house. The two constables separated to investigate, Cock following the man into the grounds of the house. The man doubled back, scaled a wall, and was jumping down from it when he was confronted by Cock. Two shots were fired, the policeman fell, and the stranger ran away. Cock died half an hour later.

The Habrons were at once suspected, for they had been heard to utter threats against the man who had been responsible for summoning them. Police went at once to the outhouses where they lived and, finding them naked in bed, arrested them. A light had been shining through the window when the force arrived, but it was extinguished at the sound of their footsteps; this, for some reason, was supposed to point to the Habrons' guilt. Next day the police examined the scene of the crime and discovered a boot-mark in a patch of mud; they declared that it corresponded exactly with a boot worn by the elder brother, which was found to be covered with wet mud. Evidence was called also at the trial to prove that William had endeavoured on the afternoon of the murder to buy cartridges at an ironmonger's. Cock's companion at the scene of the crime deposed to seeing a man pass a few minutes before the shots were fired, whom he thought might be William Habron.

On the other hand, Cock said, before he died, that he did not know who had shot him. The defence was that the threats uttered by the prisoners—chiefly, it was pointed out, by the younger one—had been to "shunt," not to "shoot," the dead man. No weapon had been found either in their possession or in the neighbourhood of the crime. It was quite reasonable, in view of the weather, that William's boots should be muddy; it was unlikely that the boot-mark in the mud was clear enough for absolute identification. As for the cartridge incident, the witnesses were by no means certain of Habron's identity, whereas there was other evidence that the men were working at the nursery at the time when one of them was alleged to be attempting to purchase the cartridges.

After two and a half hours' retirement the jury found



(1) FLORENCE MAYBRICK AND HER HUSBAND, JAMES MAYBRICK

(2) BATTLECREASE HOUSE, AIGBURTH, LIVERPOOL  
The Home of the Maybricks

*The Unhappy Markman.*  
OR  
A Perfect and Impartial  
DISCOVERY  
OF  
That late Barbarous and Unparalle'd  
MURDER  
Committed by *Mr. George Strangways*,  
Formerly a Major in the KING'S Army,  
on his Brother-in-law  
*Mr. John Fustell* an Attorney,  
on Friday the Eleventh of February.

Together with a full Discovery of the  
Fatal Cause of those unhappy Differences which first  
occasioned the Suits in Law betwixt them. Also the  
behavior of *Mr. Strangways* at his Tryal. The dreadful Sen-  
tence pronounced against him. His Letter to his Brother-in-  
law, a Member of Parliament. The words by him delivered at  
his death, and his stout, but Christian-like manner of dying.

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*Published by a Faithful Hand.*

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Ovid. Trist. lib. 4.

*Strangulat inclusus dolor, atque cor aestuat intus.*

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*London*, Printed by *T. N.* for *R. Clavell* at the Stags Head in *St. Pauls Churchyard* by *St. Gregories Church*. 1659.

TITLE PAGE

of an old pamphlet referring to Major Strangeway's crimae.

William Habron guilty—with a recommendation to mercy on account of his youth—and his brother not guilty. William was sentenced to death. It was, however, generally felt that the evidence was insufficient for conviction; a petition, signed by many local residents, was forwarded to London, and the Home Secretary reduced the sentence to one of life imprisonment.

Just over two years later Charles Peace, lying in prison at Leeds under sentence of death, sent for a clergyman and confessed to him that he had shot Cock. He had intended, he said, to break into the house, was observed by two policemen, and, endeavouring to escape, ran into Cock's arms. Peace fired wide the first time to frighten him, and straight the second. "I got away, which was all I wanted. Some time after I saw in the papers that certain men had been taken into custody for the murder of this policeman. That interested me. I thought I should like to attend the trial, and I determined to be present. I left Hull for Manchester, not telling my family where I had gone. I attended the Manchester Assizes for two days, and heard the youngest of the brothers, as I was told they were, sentenced to death. The sentence was afterwards reduced to penal servitude for life. Now, sir, some people will say I was a hardened wretch for allowing an innocent man to suffer for my crime. But what man would have done otherwise in my position? Could I have done otherwise, knowing, as I did, that I should certainly be hanged for the crime? But now that I am going to forfeit my own life, and feel that I have nothing to gain by further secrecy, I think it right, in the sight of God and man, to clear this young man, who is innocent of the crime."

Peace drew a map of the spot and described his movements with sufficient accuracy to make it evident that he was indeed guilty; so the Home Office decided, after a certain natural hesitation. William Habron was given a free pardon and an indemnity of £800. He ought never to have been convicted.

It is somewhat significant that Peace committed the murder for which he was eventually hanged on the very day after he had watched this innocent man sentenced to death for his other crime. Habron was sentenced on 28th November, 1876; on 29th November, at Banner Cross, in Sheffield, Charles Peace shot and killed Arthur Dyson, an engineer employed by the North-Eastern Railway. Evidence at the inquest showed

that Peace and the Dysons had previously been neighbours at Darnall, a suburb of Sheffield. Peace had for some time pestered the Dysons with his advances. When he was forbidden the house, he uttered threats against the Dysons, for which a summons was taken out against him. He did not appear in court to answer it; a warrant was issued, but he disappeared from the district. The Dysons moved from Darnall to Banner Cross, but Peace turned up there, shot Dyson dead and escaped. The jury at the inquest returned a verdict of wilful murder against Peace. Hue and cry were raised, and £100 reward was offered for his apprehension. No trace of him, however, could be found. Two years elapsed. Peace had disappeared, Mrs. Dyson went to America, and the Banner Cross murder seemed destined never to be avenged.

Nor, indeed, would it have been but for a curious succession of incidents.

In the years 1877 and 1878 a respectable old gentleman lived in a respectable little house in a respectable street of a respectable London suburb. His name was Thompson, and his address East Terrace, Evelina Road, Peckham, S.E. With him lived his wife, Mrs. Thompson, a young and handsome woman with a certain failing for drink. Their housekeeper, Mrs. Ward, and her son, Willie, occupied the basement. The house was well, almost richly, furnished. Thompson was a popular member of the congregation of the parish church. He had the endearing trait of loving animals, and kept many pets. Though he did not lack for money, he amused himself by assisting a neighbour in an invention designed to raise "sunken vessels by the displacement of water within them by air and gases." With this object they occasionally visited a pond in the neighbourhood to experiment on a toy yacht. They also wrote to the Admiralty offering to raise two vessels which had sunk; but their offer was rejected, as was a similar proposal to the German Government. Mr. Thompson, whose swarthy features suggested a tinge of negro blood, possessed a considerable collection of violins, guitars, concertinas and other musical instruments, and it was his pleasure to exhibit his skill on them to a few favoured acquaintances.

But the oddest thing about this household was that Thompson was Charles Peace. "Mrs. Thompson" was a woman with whom he had first become friendly in

Nottingham ; while " Mrs. Ward," the housekeeper, and her son were Peace's wife and stepson. And " Thompson's " unlaborious employment with his neighbour did not prevent his spending a great part of the night in robbing suitable houses in the neighbourhood.

It was during such an escapade that he was arrested. One October evening in 1878, " Mr. and Mrs. Thompson " and " Mrs. Ward " spent a musical evening, he playing the violin, they singing and accompanying him on the harmonium. The women went to bed and Peace, as we may now call him, crept out and broke into a house at Blackheath. Two policemen happened to see a light moving in the house at two in the morning, called a sergeant, and kept the place under observation. Shortly afterwards a man came out and walked down the garden, where one of the policemen, named Robinson, was concealed. When he saw Robinson he fired two shots, both of which missed, shouting with an oath : " Keep back, keep back, or I'll shoot you ! " Robinson, however, closed with him ; three more shots were fired, one of which entered the policeman's head and another his arm ; fortunately they did not prove fatal. The other constable and the sergeant rushed up and overpowered the burglar, whose revolver was strapped to his wrist.

At the police station he gave his name as John Ward and his age as sixty. A set of housebreaking tools was found in his pocket, as well as a pocket-knife which had been stolen in another local burglary a few months before. He appeared on remand on 18th October, 1878. He engaged a solicitor to represent him and, after formal evidence had been given, he was remanded for a week, then for another week, and finally committed for trial at the Old Bailey. But while he was waiting for his trial, " Ward " wrote to " Thompson's " neighbour, the inventor, and begged him to visit an unfortunate man who, through the sin of drunkenness, found himself in a regrettable situation. The neighbour, mystified by this letter and not in the least connecting it with the disappearance of his friend, arrived, and discovered to his amazement that " Ward " and " Thompson " were identical. He communicated his discovery to the police, who hastened to communicate with the already alarmed Thompson menage. " Mrs. Ward " and her son had run away with some of the plunder, but " Mrs. Thompson " revealed the astounding fact that their prisoner

was Charles Peace, who was wanted for the Banner Cross murder.

On 19th November, "John Ward, alias Charles Peace, aged sixty," appeared before Mr. Justice Hawkins for his Blackheath offence. Sir Harry Poland led for the prosecution; Peace was represented by two counsel.

During the hearing of the case Peace played the part of an unfortunate old man with whom fate had dealt hardly. He had given his age as sixty, and looked it; but he was actually fourteen years younger. When the jury found him guilty and he was asked by the Judge if he had anything to say, he made a long and miserable plea for mercy "in a whining tone, with tears in his eyes, and almost grovelling on the floor." He declared that he did not know the pistol was loaded, that he had only meant to frighten the policeman, not to hurt him, and that the shots which had wounded him had been accidentally discharged during the struggle. "Oh, my lord, I know I am bad and base to the uttermost, but I know at the same time they have painted my case blacker than it really is. . . . So, oh, my lord, have mercy upon me, I pray and beseech you," is a specimen of the appeal which, with many protestations of piety and repentance, he made to the utterly unresponsive Judge. Peace was sentenced to penal servitude for life, and removed to Pentonville Prison.

The discovery, now made, of the prisoner's true identity revived the Banner Cross case. Mrs. Dyson was sent for, and arrived at Queenstown from America early in January. Ten days later Peace was taken to Sheffield and charged before the magistrates with the murder of Arthur Dyson two years before. Mrs. Dyson gave the principal evidence, for she had been the only eye-witness of the crime. Peace frequently interrupted her and the other witnesses, charging them with perjury. He complained also that the reporters in Court were sketching him. The trial was adjourned until the following Wednesday, the prisoner being taken back to London in the interval.

On the return to Sheffield on this Wednesday morning in the charge of two warders, Peace made a desperate attempt to escape from the train. It was moving at the rate of nearly fifty miles an hour, but Peace, an agile little man, flung himself through the window. One of the warders succeeded in grasping his boot; the other pulled the alarm signal. Peace hung out of the window for some moments, struggling; then

he wriggled free of his boot and fell on his head in the snow by the side of the track. There he was found unconscious and bleeding when the train stopped.

As he was, or professed to be, too ill to go into Court, his examination was resumed in the passage outside his cell in the police station at Sheffield; he was carried in, bandaged and wrapped in rugs, and placed in an armchair. To what extent his pain was real cannot be known. Despite his apparent feebleness, he loudly declared that he had "lots of witnesses who can prove that that base, bad woman has threatened my life, and has threatened her husband's life. But I can't talk to you, I am so bad. I feel very bad, but she has threatened to take my life often. . . . She has threatened her husband's, and she has pointed pistols and things at me. He has threatened hers as well." He was also able at the end of the inquiry to instruct his solicitors in firm and decided tones, which suggests that he had again been exercising his undoubted skill as an actor.

He was lodged in Wakefield and Leeds jails pending the trial. From the former he wrote to "Mrs. Thompson" to sell some of his goods and engage a barrister who would "save me from the perjury of that villainous woman, Mrs. Dyson." He did not know that "Mrs. Thompson" had given him away to the police, for which she was afterwards to claim the £100 reward. His neighbour, the inventor, is also said to have claimed the reward. Peace wrote also to his real wife, as from her "affectionate and unhappy husband."

On 4th February, 1879, Peace was at last brought to trial for the murder of Arthur Dyson. The Judge was Mr. Justice Lopes, who afterwards became Lord Ludlow. Peace, who was represented by Mr. Frank Lockwood and Mr. Stuart Wortley, pleaded not guilty. The prosecuting counsel described the crime. The Dysons and the Peaces lived next door but one to each other in a row of workmen's cottages at Darnall. Peace's apparent occupation was picture-framing, and the Dysons employed him to frame two or three small pictures for them. After a while Peace came to treat their house as his own, walking in at all times, whereupon Dyson wrote on a card: "Charles Peace is requested not to interfere with my family," and threw it into Peace's garden. Peace later in the same day tried to trip up Dyson in the street and, producing a revolver, threatened to kill both him and his wife. They took out a



summons and he disappeared; to make themselves doubly safe from his attentions, they moved six miles away to Banner Cross. But when they arrived in sight of their new home, in front of which the furniture van was being unloaded, they saw Peace coming out of the house. He reiterated his intention to annoy them, but for a month they saw nothing more of him. In the evening of 29th November he reappeared, with a packet of letters and photographs which, he assured such of the Dysons' new neighbours as he could induce to listen, would show them the sort of people the Dysons were.

He loitered outside their house until Mrs. Dyson went down the yard, where he followed her. He pointed a revolver; she screamed, and her husband ran out of the house into the yard. Peace fired at him, and he fell. The prisoner then scaled a wall and escaped.

Mrs. Dyson was once again the principal witness. She repeated fairly exactly the evidence she had given at the inquest two years before and at the inquiry. The prisoner's counsel cross-examined her to suggest that her husband, who was an extremely tall and powerful man, attacked Peace in an access of jealousy, and that the revolver was accidentally discharged during the struggle. This she denied. Her acquaintance with Peace, however, proved to be rather more intimate than had hitherto been supposed. They had visited Sheffield Fair together, been photographed together, and visited a public-house together. He had given her a ring. A number of letters were produced which, Peace claimed, were written by her to him. If genuine, these suggested that they were accustomed to meet in the garret of an empty house between their dwellings at Darnall. One of the letters thanked him for a ring, and Mrs. Dyson had admitted receiving a ring from Peace. But she swore that the letters were not written by her.

Whether they were or not was, of course, not directly material in determining Peace's innocence or guilt of the murder of her husband. But her reliability as a witness was material, for she alone had seen what happened at the shooting. During Mr. Lockwood's speech to the jury the prisoner interjected occasional comments, such as: "Hear, hear," and "I am not fit to die." But there was no hope for him; the jury immediately brought in a verdict of guilty, and the Judge passed sentence of death.

While he was awaiting execution, Peace sent for a Darnall clergyman and confessed his share in the Whalley Range murder for which John Habron had been sentenced. At the same time he gave his account of the death of Dyson. Peace said he was standing on a wall at the back of the house, watching Mrs. Dyson, who had been his mistress, through a window; she was putting her little boy to bed. He whistled to her—a signal to which she was accustomed—and she came down. Peace wanted her to induce her husband to withdraw the warrant which had been issued against him, but she became abusive and an altercation followed. Dyson heard the noise, came out and seized Peace. The latter fired his revolver (which, as usual, was strapped to his wrist) in the air to frighten him; then, as this had no effect, he fired again, wishing to disable, not to kill him.

The chief interest of the career of Charles Peace does not lie in the sordid crimes for which he eventually paid the penalty. His complex personality and his remarkable powers of disguise single him out from the general run of murderers.

He was born about 1832 in Sheffield, his father being a wild-beast tamer employed by Wombwell's menagerie. The latter transmitted to his son an interest in animals and a love of music. But music did not exercise a restraining influence on the boy, who was always brutal and unruly. At an early age Charles, employed in a mill, injured his leg and his left hand in an accident. He never did any more honest work. Permanently lame, and with a maimed hand, he devoted himself to a life of crime.

Although his injuries should have made him conspicuous, he contrived to conceal his hand under his coat and to wear a false arm in his sleeve, terminating with a hook. He boasted, with reason, that he would walk past detectives who were searching for him without any danger of recognition. They only looked, he said, at one's face, and he had an abnormal power to protrude his lower jaw and to suffuse his face with blood, thus altering his whole appearance and taking on the likeness of a mulatto. So confident was he of his powers of disguise that, he claimed, he visited Scotland Yard to read the descriptive notices offering a reward for his apprehension. He later used walnut juice to effect a permanent change in his appearance.

He was one of the first "cat burglars," who were known in

those days as "portico thieves." In the intervals of his burglaries and occasional minor terms of imprisonment, and also, no doubt, as a means of watching likely premises, Peace became an itinerant musician. He described himself modestly as "The Modern Paganini" and "The Great Ethiopian Musician," and sang songs of his own composition to the accompaniment of a one-stringed fiddle of his own making. He also recited; Sir Archibald Bodkin, as a schoolboy at Highgate, was one of a juvenile audience who heard him declaim the grave scene from Hamlet.

Peace's professions of piety lasted to the end. He wrote to various members of his family assuring them of his repentance and enclosing specimens of prayers he had composed. And to his wife he sent a funeral card as follows :

In  
Memory  
of  
CHARLES PEACE  
who was executed in  
Armley Prison,  
Tuesday, February 25th,  
1879. Aged 47.

*For that I don but never  
intended.*

There must have been some slight particle of goodness in the man, for, as he was being taken to the scaffold and was permitted to address a group of reporters, his last words were a hope that no one would taunt or jeer at his wife and children on his account, "but will have mercy upon them."

A more curious and complicated personality than that of Charles Peace can rarely have existed.

# *Joan of Arc*



## JOAN OF ARC

**F**IVE hundred years ago the throne of France was claimed by two kings, the one French, the other half English and half French. The first candidate was Charles VII, sometimes known as the Dauphin, the son of the mad Charles VI of France and his Bavarian queen, Ysabeau. The second was the Dauphin's nephew, the infant Henry VI of England, whose mother, Catherine of Valois, was the mad king's daughter. Each had a good case. The Dauphin relied on his natural right to succeed his father on the throne, whereas Henry's claim was based on the Treaty of Troyes of 1420, whereby his father, Henry V, was declared King of France and England, with the two kingdoms united under a single crown. Queen Ysabeau favoured the English claimant and did not scruple to declare her son a bastard; her morals were notably lax, but it seems most probable that the Dauphin was really her husband's son. Whether he was so in fact or not, however, he was indisputably so in law.

The two most powerful men in France were the Duke of Orleans and the Duke of Burgundy. Bitter enemies, their power extended over the South and North of France respectively. The Duke of Orleans was a prisoner in England, but all his influence was still thrown on the side of the Dauphin. The Burgundians were the allies of the English. English and Burgundian troops under the Duke of Bedford, Henry's Regent in France, and the Duke of Burgundy were temporarily victorious; they occupied the north and east of the country; Paris was in their hands; its University and Parliament acknowledged Henry as rightful king; and even Orleans, the last important stronghold faithful to the Dauphin, was besieged. Although Charles VII had formally declared himself King on his father's death, he was unable to receive the usual unction in the cathedral at Rheims, which was in the hands of his enemies.

It was in this gloomy hour for the fortunes of France that

an extraordinary figure appeared who was to a later generation to represent the incarnation of French patriotism. She was Joan of Arc, a village maid, who in a few short months turned the tide of battle ; rallied the Dauphin's disheartened forces ; set him on the high road to victory ; ruined the English cause in France ; and perished at the stake.

Jeannette d'Arc—otherwise Joan of Arc—was the daughter of a small but locally important farmer of Domremy, a Lorraine village on the left bank of the Meuse, seven miles from Neufchâteau. She was born on 6th January, 1411, or in the following year—she did not know which. She worked in the fields and in the farmhouse like the other hardy peasant girls of the village ; at her trial she boasted that she could embroider as well as any matron of Rouen. She could neither read nor write, but she prayed much and delighted to listen to stories of the saints. Her village, standing on a high road, was peculiarly liable to attack by marauding troops, who cared little whether they plundered friend or enemy. The people of Domremy were sympathetic to the Dauphin's cause, but neighbouring villages were for the Burgundians. Joan was brought up in the midst of alarms and in the atmosphere of war, facts which help to explain her later career.

One summer noon she was working in her father's garden, a thirteen-year-old child, when she saw (or thought she saw) a great light on the right of her, in the direction of the church, and heard a loud voice saying : " I come from God to aid you to live a good and holy life. Be good, Jeannette, and God will help you." Soon the same voice and the same light appeared to her again. The third time this happened Joan saw that Saint Michael, the patron saint of the district, was speaking to her. He now came to her frequently. Sometimes the pealing of the church bell would be the signal for his appearance ; sometimes Joan invoked him in prayer. He brought with him St. Catherine and St. Margaret, who also became her constant advisers. She vowed to them to remain a virgin. It was well known in the Middle Ages that a virgin might be especially blessed with divine inspiration, whereas no woman who allied herself with diabolical forces could remain one. Joan told nobody, not even her confessor, of her marvellous Voices.

One day these declared her destiny to her : " Daughter of God, leave your village and go to France." And again,

"You shall lead the Dauphin to Rheims, that he may there be anointed King." Then the Voices told her to ask Robert de Baudricourt, the chief noble of the neighbourhood, for an escort to conduct her to the Dauphin. She went to see him, but he was unimpressed, and advised the man who introduced her to box her ears and take her home to her father. So she returned to Domremy.

Her father did not know—or knew little—of her Voices, but he knew of her visit to Robert, and, dreaming one night that she had fled from home with soldiers, he declared that, rather than this should happen, he or his sons would drown her in the river. But soon all of them had to flee, for war swept down again on Domremy and the villagers took refuge in Neufchâteau. During this period Joan was indicted by a young man for breach of promise of marriage. The case was never judged. Either he died during the hearing or he abandoned the process. We have no record of this trial; indeed, we know of it only from the fairly full account of Joan's life which was produced at her later trial at Rouen.

When the villagers returned, they found Domremy plundered and burnt by the troops. Joan's Voices grew more insistent in their commands to succour the Dauphin. One may conjecture that her father's spirit was weakened by the misfortunes which had recently overcome him and that he was no longer able to restrain her. She went again to Robert de Baudricourt and told him that she held a divine command to raise the siege of Orleans and to lead Charles to Rheims.

It must be understood that Joan was neither the first nor the last of the claimants of divine inspiration who came forward to succour the Dauphin. Voices were heard by other men and women. These, too uttered prophecies and rose to prominence in a credulous Court; but Joan alone fulfilled a high destiny. Her Voices aimed higher than her rivals', and her purity and strength of character far exceeded theirs.

Robert de Baudricourt, more impressed by this second visit, sent word to the Dauphin, who summoned Joan to him at Chinon, not far from beleaguered Orleans. She set out on horseback with an escort provided by Robert. He gave her a sword; his vassals a suit of man's clothing. She had her hair cut short like a boy's. Without this disguise a young and handsome girl, travelling through the disturbed country, must



have attracted undesirable attention. Joan, however, could trust her companions, who fell at once under the spell of her mysterious strength and innocence. The wearing of male dress soon became for her a divine command.

Avoiding the more dangerous roads, they reached Chinon in March, 1429. Joan was taken to Court and, according to a doubtful legend, picked out the Dauphin from his attendants, among whom he was hiding. When he asked her why she had come, she replied: "The King of Heaven has spoken to you through me, saying that you will be anointed and crowned at Rheims." And she demanded to be sent at once against his enemies.

This was not so simple. It was necessary first to prove that her inspiration was divine and not a diabolical counterfeit. She was accordingly conducted to Poitiers for examination by Charles's Parliament, the rival assembly to that of Paris. Indignant that doubt was cast on her mission, she nevertheless submitted to be examined. Her frank answers pleased the clergy, who were pardonably anxious to secure the services of anyone whose presence might rally the Dauphin's flagging troops; but they asked her for a sure sign that she was sent by God. "The sign I shall show you," she said, "will be the relief of Orleans." A jury of matrons declared her a virgin, and the Maid returned to the Dauphin as an ally of certified worth and integrity.

Marvellous stories about her were already in circulation in Orleans, where her coming was eagerly awaited. Joan dictated a letter to Henry VI, his Regent and the other English leaders, commanding them to "surrender to the Maid sent hither by God, the King of Heaven, the keys of all the good towns in France that you have taken and ravaged. . . . And you archers, comrades in arms, gentle and otherwise, who are before the town of Orleans, go hence into your own land, in God's name. . . . I am a chieftain of war, and in whatsoever place in France I meet with your men, I will force them to depart willy-nilly; if they will not, then I will have them all slain. . . . Think not in your heart that you will hold the kingdom of France, for it is King Charles, the true heir, who shall hold it. God, the King of Heaven, so wills it, as he has revealed to King Charles by me, the Maid." Not the least interesting feature of this letter is the suggestion that English and French should join forces under her command to

undertake a new crusade in the Holy Land. But the English laughed at her letter, calling her witch and strumpet.

She set out at last from Chinon to Orleans. The King gave her a suit of white armour; she rode a white horse and her standard was borne before her. This had been painted by a Scot, one Hamish Power, resident in Tours; it showed the Saviour on his throne, with angels presenting to Him the fleurs-de-lys, which were Charles's badge. Her coat of arms bore the crest "*De par le Roi de Ciel*"—"On behalf of the King of Heaven." She carried a sword which was supposed to be a magical blade belonging to the great Charles Martel seven hundred years before. Now and hereafter Joan insisted that the French troops could not be victorious unless they made their peace with God; she urged them to confess frequently, to pray, and, above all, never to swear or allow loose women to accompany them. She personally attacked such camp-followers, even breaking her sword over the back of one of them. It is curious to recall that one of her closest companions was the brave and debonair Giles de Rais, afterwards infamous as the murderous original of Bluebeard. Joan's two brothers were also with her.

On 28th April she arrived in sight of Orleans, the siege of which she had declared herself destined to raise. With her were six hundred wagons of food and four hundred head of cattle. The townsfolk had sent barges to fetch the supplies, but the vessels could not return because of a contrary wind. "Wait," said Joan, "for in God's name everything shall enter the town." Soon the wind changed, and this incident was duly magnified into a miracle.

The fact that Joan was able to enter Orleans and send in the supplies without a struggle demonstrates how weak the siege was. The assailants were not merely outnumbered tenfold by the besieged, but they were exhausted by hunger and lack of all supplies. Though they held command on the bridge across the river, they could not take Orleans by assault. The French considered themselves too weak to force them to raise the siege. Both sides hoped and waited for reinforcements. Joan arrived to put an end to this ludicrous deadlock.

The degree of military skill with which she must be credited has been very variously judged. Certain enthusiasts declare that she possessed military genius far beyond her years and her times. Others suppose her a tool in the hands of the Dauphin's

advisers. In either case she owed both her feats and defeats in the field to unswerving courage and determination. Only boldness was needed to raise the siege of Orleans ; but until her coming, courage was altogether lacking in the French camp. They were forty thousand ; the English only three thousand.

Five days after her arrival Joan set herself at the head of a sortie, and easily stormed one of the bastions which the English had built round the city. Two days later she led her countrymen successfully against another English position. And the next day again she undertook to capture the key of the enemy's strength, the tower by which the English held the bridge across the river. She laid the first ladder against the rampart, when she was wounded by an arrow in her right shoulder. But her saints appeared to her ; she donned her armour again and returned to the attack. By evening her standard was planted on the ramparts ; the fort was taken, and the French returned in triumph to the city over the bridge, even as she had prophesied in the morning. More than forty of the English leaders were drowned in the Loire ; of their men, four hundred were killed and two hundred captured, the loss representing nearly a quarter of their force. The survivors, depressed by the new turn of hostilities and disheartened by the continued absence of reinforcements, broke up the siege overnight. Thus the Maid saved Orleans in nine days and displayed her promised sign to all doubters. From that moment she was revered by the Dauphin's party as a messenger from Heaven, and correspondingly loathed by the English and the Burgundians as a monster and a servant of Satan.

She now urged the Dauphin to advance on Rheims. Once again the bold policy was the best. First, however, the fortress of Jargeau was stormed and the Earl of Suffolk and his brother were captured. So easily was this victory won that the French suffered only twenty casualties. After Jargeau, Beaugency fell to the invincible Maid. The reinforcements for which the English had so long been waiting now approached. They were commanded by Sir John Fastolf (Shakespeare's Falstaff), and it is therefore possible that they were not led with courage equal to the new-found valour of the French. The latter, moreover, had their usual advantage in numbers, with twelve thousand men against five. Battle was joined at Patay : Fastolf ran away ; his colleague, Sir John Talbot, was captured, and the

English were routed. That Joan could also be gentle was shown when she dismounted after the fight beside a wounded English prisoner. She raised his head, soothed him in his pain, and sent for a priest to confess him.

When next she saw Charles she told him that he would shortly receive the whole of his kingdom and be duly crowned at Rheims. He in turn appointed her one of the three commanders of the army. Her prowess and her miracles—for by that time she was held to have performed many, including raising the dead to life—began to circulate all over Europe.

The French now made for Rheims. Troyes, Chalons and other towns surrendered, and counselled the citizens of Rheims to do the same. On 16th July, just two months after the raising of the siege of Orleans, Charles and Joan entered the desired city. Next day, Sunday, Charles was anointed in the Cathedral, fulfilling the Maid's prophecy. She stood beside him, holding her banner over him.

The next advance was towards Paris. At first all went well; the march was a triumphal progress. Beauvais, Compiègne, and St. Denis fell into Charles's hands. On 8th September Joan led an assault on the St. Honoré Gate of the capital, summoning the inhabitants to throw over their allegiance to the Duke of Burgundy and to surrender. This day was the festival of the Virgin's Nativity, a holy day on which fighting was usually considered out of place. But Joan set her Voices above such considerations—a fact which was afterwards brought against her at her trial.

The assault was a failure. Joan herself was wounded in the thigh by a shot from a crossbow and carried out of danger. Her shining career was already setting into its decline.

The King could no longer afford to maintain his army. He drew off from Paris, satisfied that the city would some day fall into his hands without fighting. Joan spent a month at Bourges, resting and recovering from her wound. She was soon sent for by the Duke of Alençon, who asked the King that she might accompany him on his projected invasion of Normandy. There, as usual, she showed extraordinary dash and courage, but the campaign drooped when winter drew on, and Joan returned southward to journey through the towns she had freed and encourage their citizens to contribute to the King's cause.

The English, themselves very weak, bribed the Duke of

Burdundy to greater activity. The inhabitants of Rheims wrote to Joan to tell her that they feared a fresh siege. She bade them take courage : " It shall not so happen ; and I may soon encounter them. If I do not, shut your gates firmly and I shall soon be with you."

At the same time she issued a threat to the Hussites of Bohemia : " Were I not occupied with the English wars, I should already have come against you. But unless I learn that you have turned from your wicked ways, I may perhaps leave the English and hasten against you, to destroy by the sword your vain and violent superstition (if I cannot do so otherwise) and to rid you either of your heresy or of your lives." Yet it was Joan herself who was destined to be condemned and executed for heresy.

With the coming of the spring, she set herself at the head of a company of horsemen, archers and crossbowmen, and returned to the wars. By Easter she was in the field, but her Voices grimly prophesied that she would soon be captured, though no harm would befall her. She marched to Compiègne, which was about to be besieged by the Duke of Burgundy. During her operations round this town she came, on 23rd May, to Crepy-en-Valois, which also was besieged. She led a sortie, crossed the river, and attacked a small Burgundian outpost a mile or so away. Clad in a surcoat of gold over her white armour and wielding a captured sword, she behaved with her usual courage and scattered the terrified enemy. But the Burgundians were reinforced, and the French had to retreat. They broke in panic-stricken disorder to the river ; some flung themselves into boats, others swarmed to the bridge. Joan refused to retire, for she was incapable of realising defeat. She cried to her companions, " Think of nothing but attacking them. . . . Forward ! They are ours ! " Her squires, however, seized her horse's head and forced her away. But already the bridgehead was held by the English, and retreat was cut off. She was pulled from her horse and surrounded. Urged to surrender on parole, she dauntlessly replied, " I have given my word to Another, and I will keep my word." Then she surrendered without terms to an archer named Lyonnell.

He handed her over to his captain, who passed her on to his master, Jean of Luxemburg. Burgundians and English alike rejoiced at her capture ; the Duke of Burgundy himself hastened to see her. As soon as the news reached Paris, the

University demanded that she should be handed over to the Church for trial as a heretic. Not merely did they hate her as an enemy, but, recognising that hers was the chief share in Charles's recovery, they desired to demonstrate that his victories had been won by disreputable and diabolical means.

After a few days' captivity in the camp outside Compiègne, Joan was imprisoned in the Castle of Beaulieu.

On 14th July Pierre Cauchon, the Bishop of Beauvais, arrived with letters from the University to demand custody of the Maid. At the same time, as if doubtful whether the Duke and his underlings would agree so lightly to surrender their valuable captive, he offered them ten thousand golden francs. He was one of King Henry's principal French servants, with the rank of Counsellor and Almoner, and also Chancellor to the Queen of England. Thus for him to receive charge of Joan was equivalent to putting her in the power of the English.

She was moved to Beaurevoir, near Cambrai, a more secure prison, where she was confined in the keep of the castle. She was well treated by Jean of Luxemburg's aunt, but a Burgundian noble attempted familiarities with her, which were indignantly repelled. She determined to leap from the top of the keep, although her Voices warned her against this. Disregarding them, however, in her desire to return to the field, she leapt seventy feet to the ground. She was not injured (so it is said; but I do not believe it). Imprisoned again, she asked pardon of her Voices for her wilfulness. Jean of Luxemburg, who seems not to have been loath to hand her over to the English, persuaded the Duke of Burgundy to take charge of her, and she was removed to Arias. There her jailers wished her to doff her male clothes, but she refused. At last, in November, she was handed over to the English and taken to Rouen by way of Dieppe.

The governor of the castle where she was now imprisoned was the Earl of Warwick, her bitterest enemy. The boy King, Henry VI, was also in the town. Joan was chained by the neck, wrists and ankles in an iron cage, in which it was impossible to stand. Round her waist, too, a chain was placed, padlocked to the wall and not removed even at night. Five English soldiers guarded her, three of them never leaving her presence.

On 3rd January, 1431, the King ordered her to be surrendered for trial by the Church, reserving the right to re-try her in the event of acquittal. Cauchon instructed a prosecutor and

summoned a number of priests and lawyers to assist him in the trial. Messengers were sent to Lorraine to gather information about her childhood. To obtain further evidence against her, the prosecutor introduced himself into her cell, disguised as a fellow-prisoner; another functionary pretended to be a Lorraine cobbler, for the same purpose. The pretended cobbler also visited her in the disguise of a monk, to whom she confessed. While these spies conversed with her, other members of the Court watched and listened at a hole in the wall. These shameful subterfuges can be explained only on the ground that she was considered a dangerous witch.

When all the preliminary evidence was collected, it was decided that there was justification for her trial for heresy. The Vice-Inquisitor for France, Jean Lemaistre, who lived in Rouen, was joined with the Bishop to conduct the proceedings.

The preliminary examination began on 21st February, in the chapel of the castle, in the presence of the Bishop and forty-one Counsellors and Assessors. Before Joan appeared she demanded that she should be permitted to hear Mass, and also that an equal number of judges of the French faction should assist at her trial. Both requests were refused; she was brought in, still in her male dress and with her ankles chained, and seated at a table. Cauchon ordered her to swear to tell the truth on the questions put to her. To this she replied: "I do not know about what you wish to question me; perhaps you will ask me things which I ought not to tell you." Ordered again to take the oath, she answered: "Of my father and mother and of what I did after journeying into France, I will willingly swear; but of the revelations which have come to me from God I will speak and reveal them to no one, save only to Charles, my king. To you I will not reveal them even if this costs me my head, because I have received them in vision and by secret counsel, and I am forbidden to reveal them."

She told her judges her name, her birthplace, the names of her godparents and her age—"I am, I should say, about nineteen years of age." Cauchon ordered her to say her paternoster, but she refused unless she could also attend confession. The Bishop forbade her to leave the prison; but she refused to give her parole, and complained that she was fettered. She was told that this was a consequence of her attempts to escape. "It is true that I wished to escape," answered Joan simply, "and so I wish still. Is not this lawful

for all prisoners ? ” So concluded the first public examination and she was removed in custody.

Next day and for four more days she was questioned by the Court about her life and deeds. She told of her Voices, her visit to Robert de Baudricourt, her journey to the King, her letters to the English commanders, and her career up to the time of her leap from the tower at Beaurevoir. The questions were often subtly designed to trap her into indiscretions. But her answers were frank and unhesitating, except on some points of which she refused to speak at all. The judges asked if it was God who ordered her to wear man's clothes and short hair. “ All I have done,” said she, “ is by Our Lord's command.” After this the judges consulted and decided to examine her in prison on certain doubtful matters. Nine such examinations took place, and at length the Act of Accusation was prepared for her trial. This consisted of seventy articles, which were eventually reduced to twelve chief heads :

(1) She refused to submit herself to the Church Militant, and claimed to have spoken with angels and be assured of her salvation.

(2) She said that the angels appeared to Charles as a sign to him to accept her.  
Catherine, and Margaret.

(3) She claimed familiarity with the Saints Michael,

(4) She thought herself competent to utter prophecies.

(5) She wore male dress and short hair like a boy's.

(6) She headed letters with the words “ Jesus Maria ” and the sign of the Cross.

(7) She left her parents against their will.

(8) She attempted to commit suicide by leaping from the tower of Beaurevoir.

(9) She claimed that her Saints had promised her Paradise.

(10) She said that the Saints were not on the side of the English.

(11) She worshipped her Saints and listened to Voice without taking counsel with her confessor.

(12) If the Church wished that she should do anything contrary to the orders she pretended to have received from God, she would not consent, whatsoever it might be.

The whole of this indictment is, of course, a gradual leading



up to the last item, by which she was shown to set up her own conscience against the wisdom of the Church. This was the essence of heresy.

The true trial opened on Shrove Tuesday, 27th March, in the great hall of the castle. Cauchon and the Vice-Inquisitor presided; thirty-eight others constituted the Court. The articles of the accusation were read to Joan, who again swore on the Gospel to speak the truth only "on all that touches the case." Day after day the trial continued; sometimes in the hall, sometimes in her cell. The judges sought to trap the Devil in her by cunning questions, but Joan's blend of fundamental simplicity and peasant shrewdness saved her from most of the snares. On some points she refused to reply. Her judges threatened her with torture, the instruments of which were shown to her. "If you were to tear me limb from limb and separate soul and body," said Joan, "I would tell you nothing more; and if I were to say anything else, I should afterwards declare that you made me say it by force." The judges decided that torture would be useless, and no attempt was made to apply it. Moreover, the Court was already unanimous, and no further proof was required.

On 2nd May the charges were finally read over to her, with the opinions of the judges and of the University of Paris, which also had been consulted. She was called upon to submit to the Church, to put aside her belief in her apparitions and so to save her soul from damnation and her body from execution. She refused.

Next day two scaffolds were erected in the town. On one sat the judges and the English captains; Joan was placed on the other. She was again exhorted to submit, and again refused. Instead, she demanded that the case should be referred to the Pope at Rome; but this request was rejected on the ground that the Court possessed ample authority to determine the matter.

Then she was silent, and Cauchon began to read the sentence. He had not read for more than a minute or two when Joan cried, "I will hold all that the Church ordains, all that you, the judges, wish to say and decree—in all I will refer me to your orders." The Bishop broke off, and Joan repeated a long formula of recantation—which had been prepared for her by the judges—and signed it with her mark. In this she confessed all the charges which her accusers brought against her.

For the first time in her life Joan was afraid ; the sight of the stake had unnerved her. Cauchon now read a sentence of perpetual imprisonment. She was taken back to her prison, put on woman's clothes and had her head shaved.

The English captains and soldiers were in despair at her reprieve from death, and we may suspect that they were not wholly innocent in the matter which again placed her at their mercy. For when the judges went to her prison four days later they found her once again dressed in male clothes. Her reasons were, first, that she was forced to remain in the company of men, and male dress was the more suitable ; and, secondly, that her captors had broken faith with her by not allowing her to attend Mass and have her irons loosed. She said also that her Voices had come again, telling her that she had damned herself by her recantation. "I would rather," she said, "do penance once for all—that is, die—than endure any longer the suffering of a prison."

It was enough. Joan was held to be a relapsed heretic ; and her fate was determined beyond hope of reprieve. She was brought out once more, on 30th May, into the old market of Rouen and placed upon a scaffold. A priest delivered a sermon on the appropriate text, "If one member suffer, all the members suffer with it," after which Cauchon declared that, "As the dog returns again to his vomit, so have you returned to your errors and crimes." She was thereupon formally cast out of the Church and handed over to the secular power with the conventional plea for mercy.

As a general rule, in such cases, the civil authorities conducted the prisoner to the Town Hall for sentence. But such was the eagerness of Joan's enemies to prevent further delay, the Bailie waived this formality and delivered her straight away to the executioner. A fool's-cap was set on her head, bearing the words, "Heretic, backslider, apostate, idolatress," and she was fastened to the stake. She appealed for a cross ; an unknown Englishman made her one of two twigs of wood, which she placed in her bosom. Then she asked a priest to hold a cross before her eyes, which he did. She prayed also to St. Michael and St. Catherine and called on the name of her Saviour. A light was set to the faggots, and the flames rose round her body. Her end was agonising ; the executioner was nervous and failed to stifle her with smoke (as was usual) before the fire reached her, and the scaffold was exceptionally

high. The charred remains of her body were shown to the people, and her brave heart, which, even after oil was thrown on the rekindled flames, was not destroyed, was thrown into the Seine. Thus perished Joan of Arc, the saviour of France.

All this time the vile Charles made no effort to save her, though it is true that his intervention could have availed little against the fury of the English. In 1450, when he had conquered Normandy and entered Rouen, he ordered an inquiry into the circumstances of the trial. The Church, however, was unwilling to excite the enmity of England by reopening the case at his request. But, two years later, a way was found to overcome this difficulty. Joan's mother claimed the rehabilitation of her daughter, citing as defendants Cauchon and the other judges, all of whom were dead.

The new trial began in 1455 at Notre Dame in Paris. Joan's mother and brothers presented their petition to a Court consisting of the Archbishop of Rheims, the Bishop of Paris, and the Bishop of Coutances, who were afterwards joined by a representative of the Inquisition. Just as in the original trial every circumstance had been twisted to inculcate Joan, so now all was turned to her benefit. Even the representative of Cauchon's family declared that Joan's condemnation had been forced on him by the English. More than one hundred witnesses were called to depose to her piety, courage, and integrity, and in June, 1456, the public announcement was made in Rouen, on the very spot where she had suffered death, that the trial was "broken, annihilated and annulled," as unfair, iniquitous, inconsistent, and erroneous in fact as well as in law.

Yet, beyond doubt, the Church was more justified (according to the customs of the times) in condemning her as a heretic than in rehabilitating her. However deplorable the incidents of her captivity, however despicable the espionage of her prosecutors, however indubitable Cauchon's desire to please his English masters—though it must not be forgotten that he spared her life when she recanted—and to take vengeance on Charles's party, the fact remains that he gave Joan a fair trial, and that she, except for one moment of weakness, defied him, the Court, and the Church to which she was subject, displaying herself an undeniable heretic, and a relapsed one to boot. Her martyrdom was inevitable; she herself demanded it.

But her cruel death will for ever shame France.

## *Bywaters and Thompson*



## BYWATERS AND THOMPSON

**I**T is not beyond experience that a guilty wife and her paramour should plan and perpetrate the murder of her inconvenient husband, though on the whole most of those who break their marriage vows are chary of committing acts of criminal violence.

In that sense the case of Edith Thompson and Frederick Bywaters is not remarkable. Their crime was simply one more example of the depths to which an adulterous passion may drag those who give way to it. In some other respects the crime was remarkable. If the evidence was true, then for months the wife was, under the direction of her partner in infidelity, attempting the life of her husband in various ways, with a lack of success faithfully reported to the other. It is not usual for would-be criminals to vary their methods, and it is at least remarkable that in this respect the accused did show an unusual versatility. Again, it is not really common for the wife to lure her husband, unsuspecting, to the spot where her lover lies in wait for him. But what gives this case its real interest is the problem whether in truth there was any such compact; whether Bywaters had ever communicated to Mrs. Thompson his intention to kill her husband; whether, indeed, he had any such intention until the last fatal moment when he saw the wedded pair quietly walking towards the home which he, by some perverted reasoning, denied the man's title, save in law, to share with her; indeed, whether after the shock of seeing her husband murdered by her lover, of trying in vain to shield the criminal, she was not also tortured by being held as guilty as he and forced to await a shameful death for a crime which, though she had played with it in thought, she did not commit.

It is well at once to say that in such matters the verdict of the jury, if properly directed as to the law, is conclusive, and rightly so. In this case there was ample evidence on which the jury could come to a conclusion adverse to Edith Thompson. They were told by the Judge in terms, both accurate and

impartial, what the question was which would enable them to decide, on the facts, whether she was guilty or not. They saw the witnesses. They heard all the evidence, including the testimony of the two accused. They listened to the arguments and to the summing-up. Juries are not prone to come to hasty conclusions in a grave case ; indeed, they are apt to apply too generously, especially in favour of a woman, the maxim that the accused is entitled to the benefit of the doubt. Consequently there is the strongest presumption in such a case that the verdict was a righteous one. The affirmation of the conviction by the Court of Criminal Appeal does not, in this regard, aid those who endeavour to form their own judgment. Rightly, that Court does not usurp the functions of the jury. If the jury are told accurately what are the relevant rules of law, if the Judge has rightly admitted or rejected the evidence tendered, and no fresh facts have come to light, then if the evidence was such that a jury could reasonably base upon it the conclusion to which they arrived, that Court will not disturb the conviction. In this case there was no misreception of evidence, no wrong ruling, no mistake as to the law. The jury were properly directed, and the evidence was such that their verdict could be based upon it. Of that there can be no doubt, and the conviction was rightly upheld.

More weight may perhaps be attached to the action of the Home Secretary in allowing the law to take its course. He is not bound by the laws of evidence : appeals may be made to him on all grounds, whether a court of law could or would have regard to them or not, and he withheld from the condemned woman the exercise of the prerogative of mercy. His is an anxious task, and he is advised by experienced assistants. It is easy, if there is the slightest doubt, to lean to the side of mercy, and the temptation to do so is always urgent. Yet he did not advise a reprieve. This is a potent argument for the inherent justice of the verdict, because his views were formed on all the materials untrammelled by any formal rules of law or evidence.

So far no mention has been made of the letters. They were remarkable, and deserve attention ; but they are not the finest specimens of their kind. Any advocate whose duties lead him into the Divorce Court can call to mind letters of greater fire and passion, full of subtleties and literary grace : these were not. So far as they breathe of passion, they harp monoton-

ously on the same string. She reiterates her desire to be with him for always, lawfully, if that may be achieved, but she longed to be with him, whatever the stigma. Yet she wanted to be respectable. Whatever her words may have been, she desired a lawful union with fair financial prospects. Though it was nearly, it was not quite "all for love, and the world well lost."

The letters have another interest. She had a business training and she reports. The topics were varied but significant. Novels, if they turned on people in a like situation especially if their difficulties vanished at another's death. Cuttings from the papers if they turned on murder or the tragedies which arise from guilty love. But last, and most damning of all, reports of attempts on her husband's life, reports of failures and requests for information and instruction, so that it would seem the next time would be the last, because successful.

Both parties explained these letters and their explanations deserve consideration. Moreover it must be remembered that they are one-sided. She destroyed his letters. He kept hers and they sealed her doom. But his may have explained her words. We can only imagine what it was that he wrote. And she after her condemnation said: "Oh but you have not seen his." Which was the dominating mind? It has been assumed as he was a youth of twenty-one and she had lived eight more years than he that she necessarily led him astray. It does not follow. History is full of examples where youth has taken the lead. In thinking of this unhappy pair we must remember that we do not know who had the greater influence; by doing so we might avoid facile conclusions.

Important as the letters are, there is other evidence, at least as important, which must be considered. What was the action of each of them at the time of the murder, and during the hours which followed immediately upon that event? Upon these actions of theirs much turns, though it must be borne in mind that if there was a murder pact, the mere fact that it was not carried out exactly when and in the manner planned does not excuse her. But the judge directed the jury to a narrower issue: whether she was party to a plan to commit the murder as it was carried out. It was on that view of the problem that the jury formed their opinion.

Apart from the letters, the facts are short and simple.



The Thompsons were a childless couple who had married in 1915. In 1916 he enlisted, but after a short training his heart was found to be unequal to the strain and he was discharged. In 1921 they were living at Ilford. Both of them were engaged in business in the City, but their employers and occupations were different. Apparently they owned everything jointly, even the banking account was in their joint names, and their salaries were the same weekly sum.

Little was said of Thompson, and the statements about him by the accused may be discounted. He was no doubt an obstacle to their desires, and, as such, his actions were viewed with a jealous eye. It would be difficult indeed for them to judge him impartially. The worst they could allege was one act of violence and his wilful failure to divorce her. That he had some suspicions is undoubted, but it must not be assumed that he knew the worst, merely because they said he did. The actual events of his intercourse with her relations strongly suggest that, so far as he knew, his wife was faithful and there was no reason to think that their married life would not continue. Apparently he desired to have a child and she denied him, partly at least because she wished to reserve that happiness for Bywaters.

It may be that Thompson had slid into the common fault of taking his wife for granted, and failed to realise that his wife was not ready to be taken for granted, and that thereby she might fall into seeking elsewhere the zest which he had lost.

Bywaters was ten years younger than Thompson. He had been to school with Mrs. Thompson's young brothers and had become a friend of the family. His occupation was that of steward on a liner and he seems to have been exceptionally competent. His leaves of absence occurred at regular periods, and it is not strange that in June, 1921, when the Thompsons spent their holiday at Shanklin, he went with them. There they agreed so well that at the end of the holiday Bywaters came to lodge with them at Ilford. The letters in the case leave no doubt that very soon, almost immediately, guilty relations began. In course of time Thompson began to be suspicious. There was a scene, and Bywaters had to go.

It is at this stage that the letters are the most important evidence. It may be assumed that, in spite of what the couple said, Thompson never knew of their meetings and letters.

At worst he thought their intimacy was too close to be seemly in a married woman. He had, however, been stirred by jealousy. She reports to Bywaters that he had on several occasions asked her if she was happy, and had received comforting assurance that she was. He complained at times that since Bywaters had come she had changed. One may draw the inference that he was seeking to keep her by him, and nothing could have been more exasperating to a wife who desired nothing so much as a severance from her husband. But Bywaters could not keep her, and there was nothing to do but wait. They had fixed upon five years as the time. This period is inconsistent with an intention to murder, and it is also inconsistent with Thompson's knowledge of her adultery, for he was to maintain the actual state of affairs until Bywaters could take her away.

Nevertheless, it is certain that Edith Thompson had no one clear intention. While her lover was away, her letters show at one and the same time a desire to commit suicide and to continue living; she can be shown to contemplate leaving Thompson and yet making plans which assume that she will not do so. But writing was at least a palliative. She pours out to her lover her opinions, her plans, her interesting cuttings, her literary criticism. But she was far from attaining her longing to enjoy her lover alone and without interruption. Though her position as an employee facilitated writing, it almost barred their meeting during the hours when the husband was at work. Her position as a wife, who normally came home when her husband did, made it difficult for interviews at other times. Though five years was the period named, she found as many months too long to wait. It was plain that events would hasten, especially as her lover showed some slight signs of cooling passion.

At last, on 23rd September, 1922, Bywaters reached England on the conclusion of his last voyage. He saw Edith Thompson two days later, and then again on the 2nd and 3rd of October. They alone could tell all that happened between them, but it may be confidently asserted that when they parted on the afternoon of 3rd October he knew that she would accompany her uncle and her husband to the theatre, and knew also when they would be walking from the station to their home and the streets along which they would pass.

He himself spent the evening with Mrs. Thompson's

family. He had a legitimate reason for going there, and in any case it would be natural for him to call. He made an appointment to take one of them to the cinema on 4th October. This may indicate the absence of any murderous design at that time, or may be carefully prepared evidence to negative such a design which had been already agreed. He left at 11 p.m., and in the ordinary course he would arrive home, miles away from Ilford, by the time the Thompsons were walking home from the station.

Necessarily the facts of the murder were not proved, with precision. The murdered man was walking with his wife and had nearly reached home. Bywaters seems to have been lying in wait for them. He rushed out and stabbed Thompson, and then ran away.

Mrs. Thompson said she was pushed violently away and was dazed. All she saw was a struggle and then the assailant running away. But she recognised him. If she is to be believed, she was unable to see what happened at the crucial time, but there was evidence that she called out piteously, "Oh, don't! Oh, don't!" and that seems to prove that she saw the stabbing.

It is certain that she ran for help. It is certain that she was hysterical and incoherent. It is also certain that when the doctor was summoned she ran ahead of him to her husband. When the doctor pronounced him dead she reproached him for not coming sooner to save her husband. But, incoherent as her words were, hysterical as she was, she retained sufficient self-control to omit all mention of Bywaters or a struggle. It was not until the next day that she mentioned "a man" to the police, and then only when told that they were sure he was murdered. Her first statement was not full or candid. But a surprise awaited her. She was taken past the room where Bywaters was in custody. In her surprise, she called out, "Oh, God, what can I do? Why did he do it? I did not want him to do it." Then she said that she must tell the truth, and, for the first time, told the story of the man rushing out from the street, pushing her away and struggling with her husband, and admitted that as the man ran away she saw that it was Bywaters. Each of them had made a statement before they recognised one another at the police station and realised that each was in custody. The immediate effect on each was to induce them to say more. Bywaters in effect



MADELEINE SMITH

*See page 427*



MISS CHUDLEIGH, DUCHESS OF KINGSTON

*See page 439*

said that his design to meet the Thompsons was not formed until after 11 o'clock and that Mrs. Thompson was not aware of his intention. From thenceforward each of the accused adhered substantially to the statements wrung from them by their sudden meeting at the police station.

There can be no doubt that Bywaters murdered Thompson. His plea of self-defence was never likely to succeed, and may be dismissed. But the woman was in a different position. It was never alleged that she had done a single act to her husband which brought about his death.

It is necessary therefore to digress somewhat to explain the rules which govern joint responsibility for a criminal act committed by one person. It is not necessary either in law or in reason that the actual deed shall have been done by an accused person. When he acts alone, that act may be done by him or by an innocent agent. If several unite in a criminal design, the act of one in furtherance of that design is imputable to all. If A, B and C, acting in concert, meet D, and A jostles him, and B, thereby enabled to pick his pocket, takes his purse and hands it to C, then the theft is committed by B alone in the sense that it is he who does the felonious taking. But it is obvious that all three are, and ought to be, equally guilty of the theft. Again, if two men set out to commit a burglary, one to stand outside and watch and the other to break in and steal, both are equally guilty of burglary. But if the marauder kills the householder who suddenly disturbs him, then the watcher is not guilty of murder, unless it can be shown that there was a common plan to overcome opposition by force. In other words, a man cannot be held guilty of an act which he did not plan and had no intention to bring about.

Mrs. Thompson therefore was not guilty unless Bywaters was acting in concert with her. Mr. Justice Shearman said to the jury: "You will not convict her unless you are satisfied that she and he agreed that this man should be murdered when he could be, and she knew that he was going to do it, and directed him to do it, and by arrangement between them he was doing it."

The evidence upon which the prosecution mainly relied to satisfy the jury consisted of the letters and of her conduct immediately before and after the murder. It is impossible to say to which the jury paid greater attention, though the public

revelled in the letters. There can be no doubt that in them she discussed and rediscussed plans to murder her husband. She mentions attempts which failed, and makes suggestions and asks for information about poisons. Admittedly, she had destroyed Bywaters' letters, and one can only infer what he wrote. But there is no trace in her replies that his letters reprobated these discussions and attempts; indeed, the only doubt is whether it was he who instigated the communications she wrote to him.

Bywaters attempted to explain them away by saying that they referred to her intention to commit suicide, and he, to prevent it, was humouring her. She on her part explained them as letters pretending to accede to his plans without furthering them, letters written with the object of binding him to her. It must be admitted that the attempts she describes seem singularly clumsy, and do not ring true. Her advisers, indeed, called evidence to prove that some of her statements were untrue. The medical evidence neither supported nor contradicted the attempts she mentions. It therefore was apparent to the jury that both prisoners could not be accurate. The wording of the letters disproved Bywaters, and yet his story tended to discredit hers, and she, as to some part of her statements, was proved a liar. It is easier to take the letters as meaning what they say: that the two were discussing ways and means of murdering Thompson—an agreement to commit murder if it could be done so as to avert suspicion. But this plan was for her to commit the murder, and that by some method of poisoning. The actual crime was a murder committed by Bywaters by an act of violence—a different method. Had they agreed that, as she had failed, he would now try in his own way to accomplish their design? If so, then the change of person and of method is explained.

One extract may make it clear that there was discussion of ways and means to murder. It is taken from a letter of 1st April, 1922. She had seen a flat which "is just the thing we wanted," and later "he" (i.e. Thompson) "was telling, his mother, etc., the circumstances of my 'Sunday morning escapade,' and he puts great stress on the fact of the tea tasting bitter 'as if something had been put in it,' he says. Now I think that whatever else I try it in again will still taste bitter—he will recognise it and be more suspicious still, and if the quantity is not successful—it will injure any chance of trying

it when you come home. Do you understand?" And then, after warning him not to let a certain "Dan" become suspicious, "because if we were successful in the action—darlint, circumstances may afterwards make us want many friends," she continues, "He says—to his people—he fought and fought with himself to keep conscious—'I'll never die, except naturally—I'm like a cat with nine lives,' he said, and detailed to them an occasion when he was young and nearly suffocated with gas fumes. I wish we had not got electric light—it would be easy. I'm going to try the glass again occasionally—when it is safe—I've got an electric globe this time."

After reading the letters, whether given in evidence or not, the strong impression remains that the most merciful view possible is that these two were playing with the idea of murder.

When the evidence as to the actual murder and succeeding events is examined, then a question naturally arises: Why should it be committed in her presence? It is hardly credible that she was to aid by hindering her husband's defence of his life. Nor was it necessary for Bywaters to have her presence or assistance in order to find a man whose habits he must have known. It brings her in, and, unless he succeeded in getting clear away, it also will bring in her family, with whom he was to spend the evening. She must explain, or suspicion would rest upon her. It would have been easier if she was not there at the time, because then she could have nothing to explain.

As a plan it was a stupid plan, unworthy of the intelligence that the prisoners undoubtedly possessed. But if the result of a sudden fit of jealous temper, then it is more natural.

Again, if the affair was planned, then the parties, one would expect, had agreed upon a common story. But did they? There was no opportunity to meet later and concoct one. Yet it is not easy to see that these two did agree upon any story. As to the letters, indeed, their evidence was mutually destructive, but, then, probably she thought them destroyed, and he did not dare reveal that he still had them.

Then there is her behaviour. A woman who has led her husband to the slaughtering point would presumably be "bloody, bold and resolute," but she wailed piteously, "Don't! Oh, don't!" She ran for help. She ran back ahead of the assistance she had summoned, and violently reproached



the doctor for not coming sooner. She was hysterical and incoherent. All this indeed she might have been, and yet guilty. Even a murderer has been known to be unmanned by the sight of his victim, and to have frantically endeavoured to recall the life which he has destroyed. But it is not likely. Nevertheless, frantic and incoherent, she suppressed the name of Bywaters. Her words, gasped out to the first people she met, were designed to induce them to believe that her husband had been taken ill. Was it all a pose? There are grave reasons to believe that it was, and yet it may have been genuine emotion. She would naturally desire to shield her lover, and her agitation, however great, need not be taken as inconsistent with surprise and shock, even if she conceived the one idea that Bywaters was to be kept out of it. Certainly what she said and did cannot be attributed to a preconceived plan; such a plan must have included some explanation by her, some conduct, designed to clear them both. It may be that she forgot her part. She was ably defended by Sir Henry Curtis-Bennett, who did his utmost for her. The summing-up erred, if at all, in her favour. It was for the jury to decide whether the circumstances which pointed to her guilt convinced them in spite of the indications which might suggest that she was not concerned in this particular attack. They decided that the circumstances proved her guilt beyond reasonable doubt.

Yet, admitting that she planned and plotted murder, recognising that if I had presided at the trial I should have directed the jury upon the same lines as Mr. Justice Shearman, realising that, as a member of the Court of Criminal Appeal, I should, like the Court, have found no reason for quashing the conviction, I have still a small, lingering doubt whether Edith Thompson on that night was present at a crime which she had arranged or, indeed, whether she had any idea that any such crime would be attempted. But I was not present at the trial, and no amount of reading will be equivalent to seeing the witnesses and hearing them give evidence. And, anyhow, she had the will to destroy her husband for the sake of her lover.

## *Charles I*



## CHARLES I

THE Martyr King is the creation of the Roundheads. In Charles's lifetime men saw only too clearly that he was lacking in judgment ; that he could not see that the pursuit of inconsistent policies at the same time damaged belief in his sincerity ; that he had an amazing faculty for alienating supporters when most he needed their support ; and that, after sacrificing devoted servants to their pursuers, he himself had ventured his fortunes on civil war and had lost all. This is not to say that he alone was responsible for all the evils that preceded and ensued upon the Civil War. There were faults upon both sides, and his difficulties were in their way more serious than those over which the Tudors had triumphed. Unlike them, he had fought his subjects and rebellion had won mastery.

As a captive he caused more problems than ever. To the Scots he had proved a means of extracting money from the English. Once handed over, there was a threefold risk. He might escape. He might make terms with Parliament. He might make terms with the Army. His captivity showed that these risks were all real ones. In 1648 there had been Royalist uprisings. Power was in the hands of his opponents, but could they keep it safely if he remained alive ?

Although to outward appearance Parliament and the Army were ranged on the same side, there were ominous signs of disunion. The Commons had suffered from defections and death, only partially remedied by new elections. The Lords adhering to the Parliamentary side were a mere handful, almost without influence, though still treated as one of the Houses of Parliament. Among the members of the Long Parliament Presbyterianism had flourished and was supreme. The Army was now controlled by its leaders, who, with few exceptions, had no sect in Parliament. They adopted the tenets of the Independents. The feeling undoubtedly existed that the victors should succeed to the government of the realm. In substance, therefore, Parliament and the Army

and at the battle of Edgehill, and had continued these wars down to 1648, whereby "much innocent blood hath been spilt, many families have been undone, the public treasure exhausted, trade obstructed and miserably decayed, vast expense and damage to the nation incurred, and many parts of the land spoiled, some of them even to desolation." It also charged him with giving Army commissions to foreigners and intending to invade England by Irish forces. It concluded by impeaching "the said Charles Stuart as a tyrant, traitor, murderer, and an implacable enemy to the Commonwealth of England."

During the reading of this indictment Charles continued to look round the Hall, but when the words "tyrant, traitor and murderer" came he smiled. About this time, as the superstitious noted, the head of the King's cane fell off. Some accounts say that he was left to pick it up himself, others that Mr. Rushworth picked it up. But whether the head had fallen off or not, it would have made no difference.

Apart from the legality of the trial, a question which will be discussed later, the great interest lay in the manœuvres that ensued. The Commissioners were well aware that their authority was, to say the least, disputable. It was important to get Charles to plead, because thereby they could claim that he had recognised their jurisdiction. Elizabeth's Commissioners had succeeded in getting from Mary Queen of Scots such support to their jurisdiction as an answer would give, but Charles was not unaware of the trap. It was also important not to allow the jurisdiction of the Court to be impugned, though every accused person can, if he has such a point, plead to the jurisdiction. On the other hand, Charles desired to challenge the right of the Court to try him, and, apart from that, to vindicate his position. It would seem that the Commissioners did not much mind his making his defence if only he would plead, but they did mind an objection that they were no lawful Court. The course of the trial therefore consisted of Charles endeavouring (1) to raise the question of jurisdiction, and (2) without pleading, to make a statement which at least would appeal to the people, while the Commissioners obstinately refused to allow any argument or statement unless the prisoner pleaded. Neither was completely successful. If Charles never pleaded, he was never allowed to make his points, but at least he did succeed in making it abundantly plain that the trial was a mere sham to lead to a foregone conclusion. But the fact that

each wanted, if possible, to induce the other side to concede a point explains the comparative courtesy with which the Commission treated the King and the King the Commission.

As soon as the charge was read and Bradshaw required him to answer, the King at once raised a sore point. He had been in negotiation with the Lords and Commons but had been removed. He desired to know why, and by what authority he should answer. "Remember I am your King, your lawful King, and beware lest you bring sin upon your own heads and the judgment of God upon this land. Think well of it, I say, before you go from one sin to a greater. Therefore let me know by what lawful authority I am seated here and I shall not be unwilling to answer. In the meantime I shall not betray my trust. I have a trust committed to me by God, by old and lawful descent, and I will not betray it to answer a new unlawful authority." The short colloquy that ensued merely showed a complete deadlock, and the Court adjourned. As the King was taken away, some cried "God save the King!" Others cried "Justice, justice!"

On Monday the 22nd the Commissioners sat in private to consider the situation caused by the challenge to their authority. Sixty-one attended. It was resolved that the King should not be allowed to raise the question of jurisdiction but should plead only in answer to the charge. If he would not, or would do so only under protest, Bradshaw was to require him in solemn terms to make confession or denial.

At the subsequent public session sixty-nine Commissioners were present.

Cook, the Solicitor-General, moved that the King be directed to answer by confession or denial, and if he refused that the charge should be taken as admitted.

Bradshaw then informed the King that they were satisfied with their authority and required him to plead without delay. Charles replied that if it were his own case alone he would be content with the protestation which he had made, but it was not his own case alone. It was the freedom and liberties of the people of England. "If power without laws may make laws, and may alter the fundamental laws of the kingdom, I do not know what subject he is in England that can be sure of his life or anything that he calls his own." He was beginning to state his objections when Bradshaw broke in upon this speech to prevent the very inconvenient arguments. The King must

submit and answer. The King protested, but Bradshaw was peremptory. Charles tried again. He pointed out that any delinquent was entitled to object that the proceedings against him were illegal. This true and obvious point was hardly countered by Bradshaw saying that it was overruled. It had not been properly argued. Still, all Charles's attempts to speak were stopped, and the Clerk of the Court read the formal order that he must answer. The only answer was, "I will answer the same as soon as I know by what authority you do this." Bradshaw ordered him to be taken away, but for a time he and the prisoner recriminated. Charles had the better of the exchange, especially when he said, "Remember that the King is not suffered to give his reasons for the liberty and freedom of his subjects," but the Commission had the power and he was taken away.

A further private meeting decided upon another attempt. At the next session, when sixty-nine again came into Westminster Hall, the Solicitor-General moved that Charles should be treated as having admitted his guilt. It was a rule in treason cases, when the accused would not put in a plea upon which an issue could be tried, that he should be taken to have pleaded guilty.

Bradshaw then warned his prisoner that the Court would not permit him to continue to delay their proceedings, and ended, "Sir, in plain terms (for the law is no respecter of persons) you are to give your positive and final answer in plain English, whether you be guilty or not guilty of the treasons laid to your charge." The King hesitated and then asked if he might speak freely, but was told that he must not until he pleaded. He then declared that he stood for the liberties of the people of England. He branched out into the sore question of the negotiations with Parliament, but was stopped, and again the Clerk read the formal demand that he should plead. He refused and was taken away.

The Commissioners sat in private to decide upon the course to adopt. They determined to hear witnesses, though, because in their view the King was guilty by reason of his contumacy, they would only hear them in private. A committee to take evidence having been appointed, thirty-two witnesses were called who proved, what was beyond doubt, that Charles had taken an active part in the Civil War. Then various of the King's documents were read in evidence.

After this a provisional resolution was passed that the King should be condemned to death. A committee was appointed to draft the sentence of the Commission.

At the next meeting the draft was finally approved, and on the 27th the Commission sat and determined upon the procedure. If Charles would plead or raise any point worth considering, they would reconsider the position. Otherwise the sentence should be read. The King might speak before, but not after, sentence.

At the public session Bradshaw and Charles disputed who should have the first word. Bradshaw won and informed him of the decision. He invited Charles to speak, but forbade any mention of jurisdiction. The King then suggested that he should be heard by the Lords and Commons. "If I cannot get this liberty," he ended, "I do protest that your fair shows of liberty and peace are pure shows and that you will not hear your King." Bradshaw remarked that this was denying the authority of the Court. The King protested that it was not, though it was true that he did not acknowledge its authority. As this was a new point, the Commission sat in private to consider it.

When they resumed, Charles was brought back and informed that they had resolved to proceed to sentence. Charles had a further struggle to speak, but Bradshaw finally ruled that, as he did not acknowledge the Court, it was not proper for him to speak—which seems to be a complete *non sequitur*, and also contrary to the decision reached in private. Nevertheless, the sentence was read, ending, "That the said Charles Stuart, as a tyrant, traitor, murderer, and public enemy, shall be put to death by severing his head from his body."

Charles attempted to speak, but Bradshaw ordered him to be removed and only a few incoherent sentences were heard.

On the 31st January the sentence was carried into effect.

Considering that Charles stood helpless in the hands of men who were determined to condemn and execute him, he effected as much as his forensic opportunities allowed. He made it clear that the Court was one of doubtful authority, and that he was not permitted to make a statement. He also made the striking point that, if his trial were lawful, then no other had security for his life or property. By dragging in the negotiations with Parliament, he demonstrated that the Army and the purged Rump had now usurped power, and



by his bearing he had impressed the bystanders with his dignity. More no man could have done. So far, therefore, as the interest of the trial turns on the manoeuvres, it must be conceded that the honours went to him.

There remains the serious question whether in law the trial was a trial at all. If the problem be approached from the standpoint of the law as it stood in 1642, when the King raised his standard, or as it was restored in 1660 and has remained ever since, there can be no possible doubt that the trial was wholly unwarranted. Indeed, the holding of the trial was in itself an act of treason, as the Regicides found in 1660. But to solve the problem on that ground would be to ignore the actual facts. For seven years two hostile armies had been contending, and for the latter period undoubtedly the actual government of the realm had been exercised by Parliament, or the part of it which had not rallied to the King.

For a further eleven years the government was a Protectorate, acknowledging no King. It is therefore true to say that, at the time of the trial, authority in this country was vested in the hands of those who ordered that trial.

The question was raised at the trial of the Regicides. It is true that, according to the barbarous practice of the times, they, like Charles, were denied counsel, but some of them were practising barristers and could therefore make their points properly. Take the argument of Cook, the Solicitor-General. He said (1) that he acted as counsel under the then supreme power; (2) that words could not be treason and it was not proved that he signed the indictment; (3) that counsel were not to be taken as personally holding views expressed by them in Court; (4) that in time of peace it would have been treason, but the King was in the hands of the Army; (5) that, acting for a fee, what he did was judicial and not malicious—(this argument naturally drew from the prosecution an allusion to Judas); (6) that he was within the Declaration of Breda. None of this really touches the problem. There were two points that could be, and were, raised by the others. One was that it was by the statute of 11 Hen. VII no treason to serve a King *de facto* against a King *de jure*. This can be dismissed. As the Court remarked, there was no King *de facto*. It was, indeed, one of the reasons why Oliver Cromwell was asked to assume the royal state. In the indictment Charles was expressly named as being the

actual King, and consequently no defence could possibly be based upon the statute.

The other point was in effect the same but on a broader basis. The trial was held under the authority of the then supreme power, and consequently, it was urged, it was a lawful trial. There can be no doubt that, where a previous form of government is overthrown, a subsequent form can be established and will in due course be duly lawful. When the stages are, as usually happens, obscure and not easy to trace, it necessarily follows that, during the period before settled government revives, jurisdiction is doubtful but, if the change is confirmed, will become certainly lawful by the event.

At the time the trial was held the situation was most obscure. The rule of King, Lords, and Commons had not been formally abolished. The rule that all justice is administered in the name of and for the King had not been abrogated, nor was there any express repeal of the undoubted rule of law that the King is not criminally responsible for any of his acts. In fact, Parliament had defied the King. Justice was administered without regard to him. But Parliament had been forcibly purged, and only a remnant of the Commons remained. The House of Lords still sat; was not abolished until after the King's execution; had unanimously rejected one proposition for the trial; and was not consulted as to the other which was acted upon. Indeed, it was the resolution upon which the trial was founded that was the first manifest declaration that the Rump claimed sovereign power.

Such an act can only become lawful if the event confirms the authority of the actors. At one time it seemed that England had passed under another system of government, tracing its origin to the overthrow of the monarch. But that appearance was not reality. England was then, as now, faithful to the cause of monarchy. What it desired was stable government acting under the rule of law. Charles had failed to give the country what it desired, and therefore he fell. His supplanters also failed, and in time they fell, so that with the Restoration it became manifest that the trial of Charles was part of an experiment that had failed, and it is in the light of that failure that the Regicides must be judged. They aimed high and struck a noble quarry, but they succeeded only in their immediate aim. Whatever may be the view of the right

policy at the moment, it is certain that they, by the trial, committed treason and could not complain when fortune turned the scales against them.

And Charles, in his trial and at the moment of his death, proved himself a greater and a braver man than ever his friends had believed him to be.

## *The Seddon Case*



## THE SEDDON CASE

THE miser is familiar to all readers of fiction. Parsimony, covetousness, the love of gold for its own sake, the neglect of all else that makes for happiness, even the habit of jingling coins and counting them, as if this produced some physical pleasure—all these traits have been portrayed over and over again by melodramatic writers. Nor is their portrait an exaggeration; the annals of the law testify to the prevalence of misers; for the temptation that their hoard presents to the evildoer makes them the frequent victims of violence. Usually the criminal is the very reverse type to his victim. It is as if the thought of so much hoarded wealth, by contrast with his own dissipated habits, goads him to a fatal act. It is almost inconceivable that the murderer of a miser should himself be a creature of the same type, but this is one of the features which makes the Seddon trial of 1911 unique in the history of crime. For Eliza Barrow was a miser, and Frederick Seddon, who was hanged for her murder, was another.

There are other matters connected with the trial which make it remarkable, and to these I shall refer later, after describing the sequence of curious events which came to light at the inquest, the magistrate's hearing and the subsequent proceedings at the Old Bailey.

Eliza Mary Barrow was about forty-nine years of age at the time of her death. She was unmarried, eccentric, deaf, unclean in her personal habits, inclined to drink heavily, quarrelsome, suspicious, and a miser. In her own lower-middle class world she was certainly a woman of means, for she possessed a capital of some £4,000, principally in the form of £1,600 India 3½ per cent Stock, the leasehold of a public-house and an adjoining barber's shop, and a certain sum of loose money. There stood to her credit in the Finsbury & City of London Savings Bank a sum of £216, and she gloated in private over a hoard of gold and banknotes which she hid in a cash-box.

This comparative wealth made her an object of interest to

her relatives, among whom she was regarded very much as was old Martin Chuzzlewit in his circle. That is to say, they endeavoured to bear with her ill-humour, and to insinuate themselves into her graces, for the sake of the money she might eventually leave them. Like Martin Chuzzlewit, she harboured few illusions about her relatives, and indeed conceived a very lively dislike for most of them. At the same time she was not averse from taking advantage of their protestations of affection, and many years of her life were spent inexpensively in their houses. From 1902 to 1908, for example, she boarded with a couple of them, Mr. and Mrs. Grant, and appears to have abated somewhat her habitual ill-temper in respect of the wife, with whom she had the friendly bond of excessive drinking. When Mrs. Grant died—two years after her husband—Miss Barrow adopted their two children, Hilda and Ernie. The girl was placed in an orphanage, but the boy, who at that time was six or seven years old, accompanied his protector uncomfortably, and in the end tragically, in her later movements.

This strange couple, the drab and greedy spinster and the little boy, went to lodge with other relatives, Mr. and Mrs. Vonderahe, in North London. After eighteen months the usual quarrel took place. It ended with Miss Barrow's spitting in Mrs. Vonderahe's face and looking about for more congenial accommodation. In this search she was aided by two other disinterested relatives, Mr. and Mrs. Hook, the brother and sister-in-law of Mrs. Grant. They saw an advertisement of an unfurnished floor to let in a house in a neighbouring street, Tollington Park, and, accompanied by Ernie, the three of them called there in July, 1910.

No. 63, Tollington Park, was the property of Frederick Henry Seddon, a superintendent of canvassers for the London & Manchester Industrial Assurance Company. He lived in a portion of it with his wife, Margaret Ann Seddon, their four children, and a more or less half-witted maid.

Seddon had been born in Lancashire in humble circumstances some thirty-eight years before. He had made his way in the service of the company by conspicuous industry and trustworthiness, becoming a superintendent in 1896, and district superintendent for Islington in 1901. But besides his post at the company, he was ready to turn his hand to any enterprise, however paltry, by which he could gratify his

overwhelming desire for gain. Thus, he set up his wife in a second-hand clothes shop; he speculated in cheap house property; he was even prepared to "walk on" at suburban theatres for half-a-crown a performance. As will be seen from the story of this trial, greed was his over-mastering passion.

The house in Tollington Park was the result of one of his less successful speculations. He had bought it at a moment when the property market was depressed, with the object of letting it at a profit. But, no satisfactory offers being made, he decided to live in it himself, letting the second floor to tenants and the basement to his company as an office for himself. The tenants left, and he advertised the vacancy. Thus began Miss Barrow's fateful acquaintance with him.

She and Ernie and the Hooks moved into the four rooms at a weekly rent of twelve shillings. Apparently she was to provide the money for the housekeeping, in return for Mrs. Hook's services as maid and cook. Within a week they were quarrelling. The trouble began with a conversation about Miss Barrow's public-house property; was intensified by the Hooks taking Ernie out for a day without her; and ended with her telling Seddon that she was afraid of the Hooks, and begging him, as landlord, to turn them out. During this animated week-end she entered Seddon's dining-room and, insisting on his shutting the door, showed him the cash-box, which she asked him to lock up for her, lest her relatives stole it. According to Seddon's account, he asked her how much money was in it, to which she replied that there was about £30 or £35. He refused to accept responsibility unless she counted the contents and took a detailed receipt; she returned to her bedroom with the box to satisfy herself about the amount, but locked herself in and did not return.

Seddon, who clearly guessed the position of the Hooks in regard to Miss Barrow, ejected them, and soon acquired the confidence of his eccentric lodger. He was admirably qualified to be her confidant, for both he and she worshipped money, especially in its tangible forms. It is a bizarre thought that, simultaneously and in the same house, the two of them, each in jealous seclusion, was gloating over different hoards of gold and listening to its delightful music as it ran through their fingers. To increase their intimacy, Seddon's daughter,



Maggie, a girl of about fifteen, became Miss Barrow's maid, for a payment of seven shillings a week. She and her mother prepared the lodger's food in the latter's private kitchen upstairs.

Seddon discovered that the spinster was worried about her public-house and the effect that the Lloyd George Budget would have upon its future. She told him that the barber's shop next door depended largely on the public-house for its customers, and that a falling-off in the one would seriously affect the other. Also, she had paid 108 for her India Stock, which had now fallen to 94. She was terrified of becoming poor. The question of an annuity was broached; finally Seddon offered her an annuity at the rate of £10 a month and her rooms free, in exchange for the stock and her titles to the property. The stock and the titles were transferred to him in due form, and in the first week of January, 1911, he paid her the first monthly instalment of £10.

At the same time he sold the stock and bought some cheap houses on a mortgage with the proceeds. Characteristically, Miss Barrow insisted on receiving her payments in gold. So nervous was she of allowing her money out of sight that, when there was a run on a certain bank, she decided that her deposit in the Savings Bank was unsafe, and went with Mrs. Seddon to draw it out. She drew the £216 in gold and, placing the sum in her cash-box, hid this in her trunk.

For several months life went on at 63, Tollington Park without incident. Miss Barrow drew her money regularly from her landlord and, with her ward, became more and more intimate with him and his family. On 1st August, accompanied by Mrs. Seddon, she paid a visit to a neighbouring physician, Dr. Paul. He diagnosed her complaint as congestion of the liver, and gave her a harmless mixture, containing rhubarb, bicarbonate of soda, and carbonate of magnesia. From 5th to 8th August the entire household, to which Seddon's aged father had now been added, went to Southend for a holiday, leaving the half-witted servant in charge of the house. A week after their return Miss Barrow again consulted the doctor, and, as she complained of asthma, he gave her a prescription of bicarbonate of potash and nux vomica. She paid two more visits to him before the end of August. The doctor, who did not consider her indisposition serious,

prescribed variously chloral hydrate and extract of grindelia. On 1st September she was taken ill with a bilious attack, followed by vomiting and diarrhœa, and on the following evening Maggie Seddon called on Dr. Paul to ask him to visit her. Dr. Paul was too busy to go, and another doctor, Dr. Sworn, who had attended the Seddons for several years, was called in. The weather was at that time unusually hot, and, since there was an epidemic of diarrhœa in the neighbourhood, Dr. Sworn saw no reason to doubt that Miss Barrow was suffering from this complaint. He prescribed a mixture of bismuth and morphia, and, visiting her again the next morning, repeated the prescription.

Miss Barrow disliked the appearance of this medicine, and, as she was still suffering, Dr. Sworn, on 4th September, prescribed an effervescing mixture of citrate of potash and bicarbonate of soda, telling her that, if she failed to take it, he would have to send her to a hospital. She said she would not go. He saw her again the four following days and found her slightly better. On Saturday the 9th he gave her a blue pill containing mercury. His next visit was on the Monday morning; she was not in pain, but very weak. He instructed Mrs. Seddon to give her brandy and Valentine's meat juice. He saw Miss Barrow for the next and last time on the Wednesday, 13th September, and, while recognising that her weakness placed her in some slight danger, saw no reason to anticipate death.

But at seven o'clock on the morning of the 14th, Seddon called at Dr. Sworn's house and reported that Miss Barrow had died an hour previously. Seddon added that he and his wife had been up all night with her; that she had been in considerable pain; and that she had at last gone into a state of insensibility and died. Dr. Sworn, of his own accord, gave him a death certificate, in which the cause of death was stated to be epidemic diarrhœa.

During the morning Seddon called upon a local undertaker, with whom he had a slight acquaintance, stating that a death had occurred in his house, and that he wished to make arrangements for an inexpensive funeral, as only £4 10s. had been found in the dead woman's possession, which must defray both the funeral expenses and a fee to the doctor. The undertaker suggested an inclusive funeral of £4, explaining that this would mean interment in a public, as distinct from

an individual, grave. Seddon replied that 10s. would not be enough for the doctor, whereupon the obliging undertaker reduced his charge to £3 7s. 6d.

The body was removed by the undertaker that evening, and two days later Miss Barrow was buried at Finchley. Thus Seddon, who by her death came into unrestricted possession of the bulk of her property, gave her in return the paltriest funeral in his power. What was more, he arranged with the undertaker that, although he was to pay only £3 7s. 6d., the receipt would be for £4, so that 12s. 6d. would be, as he said, "a little bit of commission like." Such was Seddon's nature.

All this time Miss Barrow's relatives, the Vonderahes, were living only a few hundred yards away, but it was not until several days after the funeral that they learned by chance that she was dead. Immediately both Mrs. Vonderahes—for there were two brothers—called upon Seddon, who asked why they had not attended the funeral, handing them at the same time the carbon copy of a letter which, he said, he had sent them immediately after the death. It was addressed to the house where the Vonderahes had previously lived; but, if sent, it was certainly never traced there or forwarded to their new address. Seddon also handed them three documents. The first was a letter in which, as executor of Miss Barrow's will, he informed her relatives that she had left all her remaining property to Hilda and Ernest Grant, with himself as sole trustee until they came of age. The letter added that she had parted with her investments in return for an annuity, which had died with her, and that "she stated in writing that she did not wish any of her relatives to receive any benefit at her death, and during her last illness declined to have any relations called in to see her, stating they had treated her badly and had not considered her, and she would not consider them."

The second document was a copy of a will signed by Miss Barrow three days before her death, and witnessed by Seddon's wife and his father, giving effect to the arrangements he had mentioned. The third was a memorial card: "In ever loving memory of Eliza Mary Barrow," with this verse:

"A dear one is missing and with us no more,  
That voice so much loved we hear not again,  
Yet we think of you now, the same as of yore,  
And know you are free from trouble and pain."

Affected no doubt by these sentiments, one of the visitors inquired what had happened to the public-house and the barber's shop, and found to her dismay that these, like the investments, had passed into Seddon's possession. She remarked that whoever persuaded Miss Barrow to part with her property must be an extremely clever person, and pointed out that the dead woman should have been buried in her family vault at Highgate. Before the ladies left, they asked Seddon to see their husbands next day, but he explained that he and his wife were going away for a fortnight's holiday. On their return Seddon sent for the elder brother, replying to the latter's questions by referring him to the Governor of the Bank of England for an assurance that the stock had been properly disposed of.

One can picture the irritation of the relatives at finding themselves not a penny the richer by Miss Barrow's death, and confronted by Seddon as practically the sole gainer. It is hardly surprising that a communication was made to the police, with the result that, a month later, Miss Barrow's body was exhumed and an inquest begun. Seddon was arrested on 4th December, and charged with the wilful murder of Miss Barrow by the administration of arsenic.

There followed one of the strangest incidents in the whole of the strange story. Two days after his arrest, Seddon, through his solicitor, sent his daughter Maggie to buy some fly-papers, explaining that Mrs. Seddon thought it possible that the presence of arsenic in the body might be explained by some arsenical fly-papers having been in the dead woman's bedroom; he wished similar papers to be analysed in support of this theory. When it is realised that the prosecution, neither then nor afterwards, was clear how the poison was administered, the significance of Seddon's action can be understood. At last the police had a clue. Why did Seddon send his daughter to buy the fly-papers? Was his reason genuine? Or was he seeking to put the prosecution on a false track? Wherever the truth lies, Maggie's errand hanged her father.

The police pursued their inquiries in several directions, and in January, Mrs. Seddon, too, was arrested. On 4th March, 1912, her husband and she were jointly charged at the Old Bailey with the wilful murder of Miss Barrow. The Attorney-General, Sir Rufus Isaacs (now Lord Reading), led

for the Crown. Seddon was represented by Mr. Marshall Hall, and Mrs. Seddon by Mr. Gervais Rentoul. The trial lasted for ten days, full of dramatic surprises. Public interest became even greater after the Attorney-General's opening speech, for it was clear that he depended on an ingenious and closely-woven chain of circumstantial evidence.

In relating the outline of Miss Barrow's last years, with much of which we are already familiar, the Attorney-General disclosed the surprising fact that more than thirty £5 notes, belonging to Miss Barrow, had been traced during her lifetime to the possession of either the male or the female prisoner, some of them endorsed by Mrs. Seddon with a false name and address; and that, on the evening of the day when Miss Barrow died, the prisoner was seen in possession of at least two hundred sovereigns in gold. These, it was suggested, were among the contents of Miss Barrow's cash-box. And on the next day Seddon had gone to a jeweller with a ring and watch belonging to the dead woman; he had the ring altered to fit his finger, and her name erased from the watch and a new dial inserted. The Attorney-General declared also that he would prove the purchase by Maggie Seddon of a packet of arsenical fly-papers on 26th August, a few days before the fatal illness began.

One of the first witnesses for the Crown was Hook, the man who was ejected with his wife from Seddon's house at the beginning of the dead woman's tenancy. He declared that the cash-box had then contained about £400 in gold, as well as banknotes, and that he had carried the box round from the Vonderahes' house to Seddon's. Then the Vonderahes were called, and they also appeared to have cast glances at the cash-box. After them the tenants of their old house swore that no letter addressed to Mr. Vonderahe had been delivered there during September. After evidence proving that the Seddons had banked or changed the thirty-three banknotes, various transfers of stock and property from Miss Barrow's possession to Seddon were detailed.

Ernie Grant, the ward of the dead woman, a small boy with adenoids, was called. He stated that he was ten years old, and had known Miss Barrow, whom he called "Chickie," as long as he could remember. When she was taken ill, he said, she made him sleep in her bed. He saw her counting her gold for the last time before they went to Southend. Once when he

had annoyed her by running round the room early in the morning, she had threatened to throw herself out of the window. During her illness she had complained of the flies in her room, but he had never seen any fly-papers there. Mrs. Seddon had usually given her her medicine. He added that, since her death, the Seddons had been very kind to him.

The next thrill was the appearance in the box of Mary Chater, the maid, who deposed that, during Miss Barrow's last illness, Mrs. Seddon cooked the invalid's food upstairs. Chater said that she had been in many positions, as maid or nurse, remaining in them only for short periods; that she had served in hospitals, and still wore nurse's uniform on occasion; that she had seen no fly-papers in the house and that she had not, knowingly or unknowingly, administered arsenic to Miss Barrow. Although she would not admit it, she was not prepared to deny that her brother had been in a lunatic asylum for twenty years.

Seddon's father gave evidence about the signature of the will three days before the death. Miss Barrow, he said, could not thoroughly understand it when it was read to her, and had asked him to fetch her glasses from the mantelpiece. He could not remember whether there was anything on the mantelpiece, but had not looked very minutely. He thought he had seen fly-papers in the house, but "could not exactly say whether they were wet or dry." He accompanied Mrs. Seddon to the undertaker's to lay a wreath on the coffin; the coffin lid was open, and Mrs. Seddon *stooped down to kiss the corpse on the forehead.*

Seddon's sister stated that her husband had written to her brother in the first week of September, asking him to lodge her and her daughter during their stay in London. Seddon had replied that an old lady was ill in the house, but they could take pot luck, if they wished. They duly arrived.

The smell from the sick-room had been most unpleasant, which she considered unhealthy both for Mrs. Seddon's nine-months-old baby and for Ernie Grant, against whose practice of sleeping with Miss Barrow she had also expostulated as neither healthy nor decent.

On the evening of the day of the death, she stated, Mrs. Seddon had accompanied her to a music-hall. On the following day all the blinds in the house were still down, and she had

inadvertently pulled one up ; Mrs. Seddon, much annoyed, had immediately replaced it.

The undertaker's story of Seddon's parsimony in regard to the funeral created a sensation. This was followed by the evidence of a chemist, who declared that he had sold a packet of arsenical fly-papers to Maggie Seddon on 26th August. He remembered the day, he said, because the customer had asked for four packets—each packet contained six papers—and he had only one in stock. After selling her this, he made a note to order more. Thus he was certain of the date. It soon appeared, however, that his identification of Maggie Seddon was open to question. He had at first told the police that he was not sure that he could identify the girl to whom he had sold the packet ; yet he knew Maggie Seddon, though not by name, as a girl who had twice called to see his daughter. It was not until the police had made many visits to him, until the case was being discussed and until a portrait of Maggie had appeared in a newspaper, that he was asked, more than five months after the alleged purchase, to identify his customer out of twenty females assembled by the police. Of these only one or two were girls with plaits of hair down their backs, and he had immediately picked upon one of them, Maggie, as his customer.

The two doctors who had attended Miss Barrow were called, and Dr. Sworn deposed that, although arsenic was well known as an adulteration of carbonate of bismuth—which he had prescribed for the patient—he should not think that his own supply of bismuth would contain any. The stock of bismuth which he had dispensed in September was now exhausted, and thus no test could be made. He added that, so far as he could judge, Mrs. Seddon was most kind and attentive to the invalid.

Dr. Willcox, the senior scientific analyst to the Home Office, who had conducted the original analysis of Miss Barrow's remains, declared that, in his opinion, over two grains of arsenic, more than a fatal dose, were in the body at the time of death, which meant that probably five grains had been taken within a few days of death. He was of opinion that the cause of death was arsenical poisoning.

He had used, among other tests, a scientific method known as "Marsh's test," not merely to demonstrate the presence of arsenic in the body, but also to provide a calculation of the

probable amount existing in it. The defence placed great emphasis on the fact that, for the purposes of this quantitative test, multiplications by 2000 had to be used, the margin of error being thus very considerable, especially in view of the fact that no large total amount of arsenic had been discovered.

The fifth day of the trial opened with Mr. Marshall Hall's submission to the judge that there was insufficient evidence against either prisoner for the case to go to the jury. He pointed out that neither prisoner had been proved to have been in possession of arsenic or to have administered it; the case for the prosecution, he claimed, rested wholly on the fact that Miss Barrow's death was to the male prisoner's financial advantage. He claimed that the presence of arsenic in Miss Barrow's hair pointed, on the admission of the expert Crown witness himself, to the deceased woman having taken arsenic for perhaps twelve months, and arsenic was used as a remedy for asthma, from which she was known to suffer. He repeated his doubts about the efficacy of the "Marsh test" as a quantitative calculation. Mr. Justice Bucknill, however, ordered the trial to proceed. Mr. Marshall Hall then opened the case for the defence.

He emphasised the circumstantial nature of the evidence and the contrast it implied between Seddon's alleged cleverness in some respects and what must appear to be his rashness and stupidity in others. Thus the prosecution suggested that Seddon, who was no scientist, knew how to extract the requisite amount of arsenic from the fly-papers and how to administer it in such a manner that its action would escape the notice of the two doctors who had been called in. Yet this clever man was supposed to have disclosed his possession of a large quantity of the dead woman's gold immediately after her death to his two assistants in the Assurance Company. Mr. Marshall Hall explained that the police were first set on the track of fly-papers, as the possible source of the arsenic, by Maggie Seddon's attempt to purchase them after her father's arrest; but the prosecution could not prove that there had been fly-papers in the house before Miss Barrow's illness began, for the chemist's identification of Maggie Seddon as his customer on 26th August was valueless. He would tell the jury why Maggie had been sent by her father's solicitor to purchase fly-papers after the proceedings had begun; it was



because Mrs. Seddon, racking her brains to think how arsenic could have entered the body, could think of nothing else to account for it but the fact that such fly-papers, purchased by herself *after* the fatal illness began, had been placed in a bowl of water near the bed. Possibly the invalid, tortured by thirst, had drunk this liquid.

There was another point, said Mr. Marshall Hall, which must not be overlooked. Seddon could easily have had the body cremated, a process which would effectively have destroyed all trace of arsenic. For this he had only to have the body viewed and certified by another doctor, which, since two doctors had attended Miss Barrow in her illness, would have been extremely simple.

Finally, he reminded the jury that it was their duty to acquit the prisoner unless the prosecution proved its case, which, he submitted, it was unable to do.

A few minutes later Seddon himself gave evidence. He was entitled to do so, and availed himself of what should have been to his advantage; but, by doing so, he probably sealed his fate. For his demeanour in the box was that of a cool, clever, self-satisfied man who gloried in every opportunity of money-making. He was easy and glib in his answers. His explanation of his transactions with Miss Barrow, of her last illness, and of his possession of large sums of money immediately afterwards, came pat from his lips; the only time he showed emotion was when suggestions were made against his wife. All observers in Court agree that the jury turned against him during his long ordeal as a witness, and it is more than possible that, had he not elected to give evidence, he might have been acquitted, if not as an innocent man, at least as one against whom the crime of murder was not proven.

He told the story of his career, revealing incidentally that his wife's dealings in second-hand clothes had ended in a family quarrel and her leaving him for some months. He recapitulated the whole story of his financial transactions with Miss Barrow. He came to the illness. Four days after this began, he said, he had entered her bedroom to remonstrate with her for going into another room when she was so ill. He noticed (as had the doctor) that the room was full of flies, this being the reason why Miss Barrow had gone into another room. A week later, on 11th September, his wife told him that Miss Barrow was worried about the children, Ernie and

Hilda, to whom she wished to bequeath her furniture and jewellery.

He suggested that she should send for a solicitor, but his wife told him that she insisted on seeing him, as she disliked solicitors. He saw Miss Barrow, who asked him to draw up a will. While he was there, he noticed four fly-papers in saucers containing water. He drafted the will, and brought it in the evening for her to sign, propping her up with pillows.

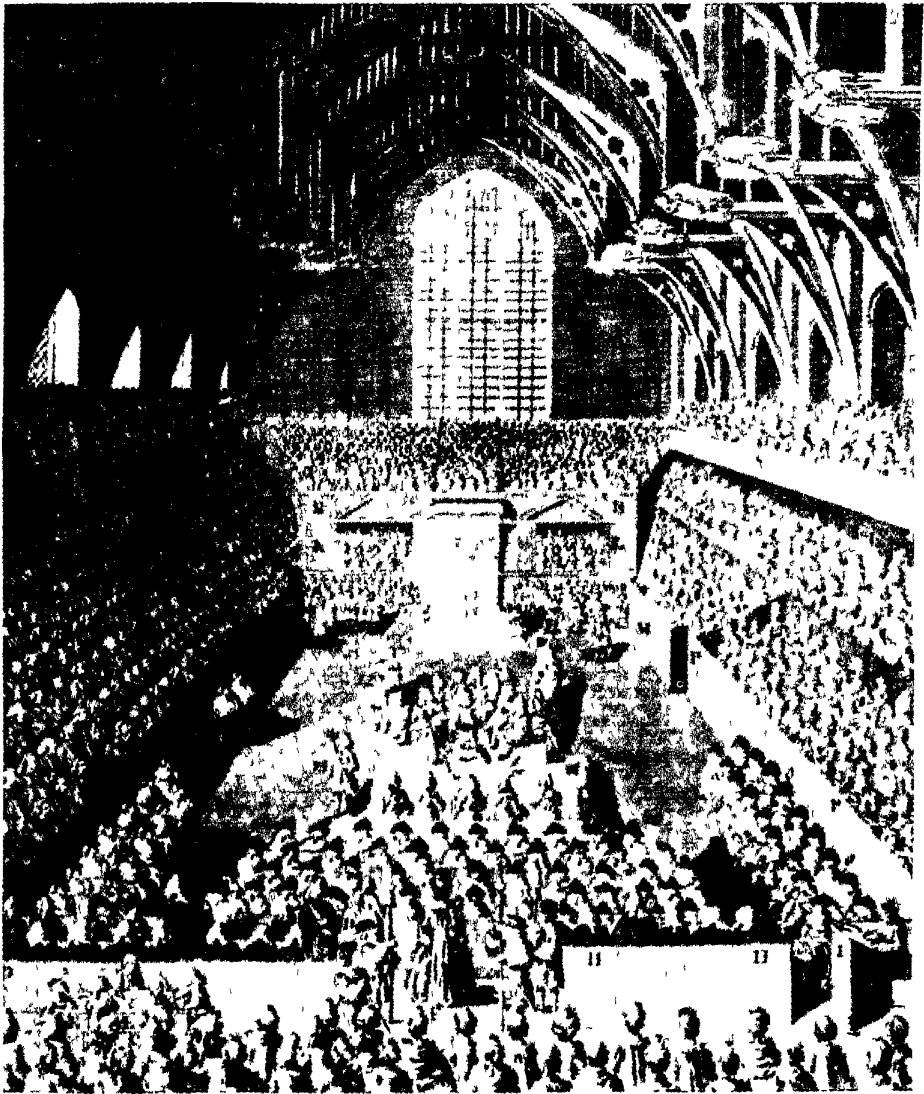
At the same time his wife told him that Miss Barrow would not take her medicine, the effervescing mixture, so he took a bottle in each hand and his wife poured out some of the contents, which he mixed together and drank to encourage the invalid. After this example, he mixed a dose for her. This and an occasion on the fatal night when he gave her some brandy, were the only times when he offered her anything to drink or eat. He was at a theatre (probably "walking on") during the whole evening of the 13th, and returned home half an hour after midnight. His wife and sister had heard Miss Barrow cry out that she was dying, but did not take this seriously. He had been in the house about half an hour when the boy Ernie called out from upstairs, "Mrs. Seddon, Chickie wants you!" As this had been going on night after night and his wife was worn out, he accompanied her to Miss Barrow's room. After remonstrating with the invalid for disturbing Mrs. Seddon so frequently, he gave her a drop of brandy and, since the smell in the room was unbearable, he left her. He and his wife went to bed about half-past two, but within an hour she was called upstairs again by the boy. The next time this happened, he went up with her, and again remonstrated. A quarter of an hour later Ernie roused them once more by shouting, "Chickie is out of bed!" Could one conceive for the poor lad a night more appalling? They rushed up and found her sitting on the floor at the foot of the bed, supported by the boy. They put her back in bed and stayed with her during the next two hours, Mrs. Seddon dozing in a chair at the bedside and her husband smoking a pipe just outside the door. Just after six in the morning she died. Seddon went for the doctor, and on his return assisted his wife and the charwoman to lay out the body. Then, according to his story, he opened Miss Barrow's trunk in their presence and found only £4 10s. in the cash-box. Later he found three sovereigns hidden in a drawer.

At the close of the seventh day of the trial Mrs. Seddon gave evidence. She declared that Miss Barrow had asked her to cash the banknotes into gold, and, never having done this before, she endorsed them with the first name that came into her head, a false name. She bought fly-papers on 4th September—the first fly-papers she had ever bought in her life—and had distributed four of them in the sick-room, first separately in saucers containing water, and then all together in a soup-plate.

A doctor was called who had previously attended Miss Barrow for gastritis due to drinking. Then Margaret Seddon, the sixteen-year-old daughter, was placed in the box. She denied purchasing fly-papers from the chemist who had identified her. It now appeared, however, that the police were prepared to show that her evidence was not reliable. For, intentionally or not, she had at first denied to a detective that she had ever been to purchase fly-papers, whereas, as was already known, she had attempted, after her father's arrest, to purchase some for his solicitor. This second chemist, recognising her name, had refused to serve her. She may have meant her denial to be a denial of the actual purchase rather than of the intention. The police asked her if she had "been to purchase" fly-papers; if she understood them to say "been and purchased," her denial would have been correct. But the prosecution insisted on this inaccuracy as proof of her unreliability as a witness.

Mr. Marshall Hall made an eloquent speech to the jury on behalf of his client, and Mr. Rentoul addressed them for Mrs. Seddon. Sir Rufus Isaacs' closing speech was a brilliant and detailed exposition of the case for the prosecution.

The Judge's summing-up can only be described as unfortunate, no matter what view one takes about Seddon's guilt. Mr. Justice Bucknill was an elderly man, on whom the strain of the long trial had obviously told. It is certain that several of his observations had exactly the opposite effect on the jury from his purpose. Thus, for example, he impressed on them that, if they doubted Seddon's guilt, they must find him Not Guilty, but he reminded them that "there are doubts, more or less, involved in every human transaction." Again, when he referred to Seddon's not sending for a doctor when he found Miss Barrow on the floor on the night of her death, he added: "Do not be prejudiced too much. It is not because



THE TRIAL OF THE DUCHESS OF KINGSTON AT WESTMINSTER  
HALL

(From a contemporary print )



DR. GEORGE PARKMAN

he did not send for a doctor that he murdered the woman, but it is a factor to take into your consideration. Do not make too much of it, but do not forget it." And again, referring to the transaction with the undertaker, the judge commented: "It was bad—it was about as bad as it could be. Pass that over, and do not be too much prejudiced against him." The effect of these remarks on the jury was probably far from his desire.

Also in summarising the facts, the Judge made at least two errors prejudicial to the prisoner. One was a statement that Mrs. Seddon had admitted leaving her husband alone with Miss Barrow on the fatal night. In short, his summing-up was damning to Seddon, but, like the Attorney-General's closing speech, much more favourable to Mrs. Seddon. The jury, after an hour's consideration, found Seddon Guilty and his wife Not Guilty. Seddon swiftly gave his wife a kiss which resounded through the Court; and she was carried hysterical out of the dock.

The drama of the trial was not yet at an end. Seddon was asked, according to custom, if he had anything to say before sentence was passed. He made a long statement in a perfectly calm voice, mentioning the main error in the Judge's summing-up, and offering a careful explanation of certain monetary transactions to which reference had been made. He urged also that, however Miss Barrow had died, suspicion would have fallen on him: "Had Miss Barrow thrown herself out through the bedroom window, I would have been believed to have thrown her out or pushed her out. Had she fallen downstairs, the same thing would have applied. When she went to Southend, had she fallen into the sea, Mr. Seddon would have pushed her into the sea." And, at the end, he raised his hand in the air in Masonic form and cried: "I declare before the Great Architect of the Universe, I am not guilty."

The Judge was himself a Mason, and, as he passed sentence, he reminded Seddon that the brotherhood to which they both belonged did not encourage crime but condemned it, and exhorted him to make his peace with the Great Architect of the Universe. Seddon twice interposed a quiet sentence. "I have a clear conscience," he said, and "I am at peace."

His appeal failed, and he was hanged on 18th April, 1912.

Mrs. Seddon created a sensation a few months later by selling a statement to a newspaper that she had seen her husband administer poison to Miss Barrow, and that he had

terrorised her into silence with a revolver; but a few days later she retracted this statement on oath. Then she married again and went to America with her family.

There are still many points of interest in the case. The manner of the administration of the poison, if indeed it was administered, remains a mystery. It has been stated that Dr. Willcox, the principal medical witness for the Crown, though he believed Seddon guilty, did not think that he had obtained the arsenic from fly-papers. Certainly the weakest point in the prosecution was the chemist's identification of Maggie Seddon as the girl who had purchased fly-papers from him before the fatal illness began; and the method by which the police trapped the girl into an inaccuracy, thus discrediting her veracity, did them little credit. It was, after all, Seddon himself who put the idea of fly-papers into the heads of the police, though why he should have done so, if he was guilty, unless it was to set them on a false scent, is not clear. Strangest of all, why was the girl sent to purchase them, when any employee of the solicitor could have done this without exciting suspicion?

Was poison wilfully administered to Miss Barrow? Did she die of it? It was certainly found in the body. Who administered it? Did Seddon? Was he shielding anyone? Had Miss Barrow been taking arsenic secretly as a remedy for her asthma? Was a large quantity of arsenic accidentally present in the doctor's drugs? Did she commit suicide? To these and similar questions, the verdict of the jury must be a sufficient answer.

I do not wish again to discuss the propriety of a conviction based upon circumstantial evidence; its weaknesses are obvious, although clearly there must be occasions when no other evidence can be adduced to bring a villain to justice. In this case, the evidence seemed to point almost equally to both prisoners, yet one was acquitted and the other condemned. It is a tradition of English law that, in the majority of crimes for which husband and wife are jointly charged, the wife is held to be acting under the husband's coercion. This does not apply in cases of murder and treason, so that the finding of the jury (with which the Judge expressed himself in agreement) becomes more significant. One must suppose that they were influenced—as juries, and judges too, must always be—by the demeanour of the respective prisoners; and

that they found their verdicts in accordance with personal impressions which no one who was not in Court can hope to appreciate. Probably Seddon's demeanour as he gave his evidence told against him as greatly as his terrible mistake in sending his daughter after his arrest to buy fly-papers. The jury may have concluded from his coolness that he was indeed capable, as the prosecution declared, of consummating a wicked and premeditated poisoning, with two doctors in attendance and a party of relatives taking "pot luck" in the house, in order to satisfy that greed of gain to which he was enslaved.

Seddon's case was undoubtedly prejudiced by his difficulty in explaining satisfactorily how the dead woman's bank-notes had come into his possession. That some very peculiar transactions had taken place during her lifetime cannot be doubted, but what they were and what offence, if any, had been committed, we can never know. The Seddons were not tried for larceny, but for murder.

There is an apparent but not a real difficulty in squaring a conviction based on circumstantial evidence with the accepted tradition that, in an English Court, a prisoner is considered innocent until he is proved guilty. Where circumstantial evidence, however strong, is adduced, as in the present case, the prisoner, to escape conviction, is in effect called upon to prove himself innocent. Thus Seddon failed to do. The prosecution could not prove decisively that he administered the poison, but, equally, he could not explain how the arsenic entered Miss Barrow's body, and he had very much to explain which he failed to explain.

One last point of interest. A petition was organised on behalf of the convicted man; those connected with it noticed that, whereas men signed the petition with alacrity, women signatories were rare. The reason appears to have been that Seddon was a man and Miss Barrow a woman, and that, since at this time the suffragette campaign was at its height, an echo of that political sex-conflict penetrated into the unsuccessful effort to obtain a reprieve for the miser of Tollington Park.





*Francis Bacon*



## FRANCIS BACON

“**T**HAT the Lord Viscount St. Albans, late Lord Chancellor of England, should pay a fine of forty thousand pounds; be imprisoned in the Tower during the King’s pleasure, and be for ever incapable of any office, place, or employment, in the estate or Commonwealth; and that he should never sit in Parliament, or come within the verge of the Court.”

This sentence, pronounced in the House of Lords on 3rd May, 1621, by Lord Chief Justice Sir Robert Hutton, broke the career and fortunes of Francis Bacon, most profound of jurists and philosophers, most enigmatical among great Englishmen. Bacon himself was spared the humiliation of appearing before the House, over which he had so majestically presided as Lord Chancellor, to receive sentence. His enemies, anxious to degrade him publicly, had arranged a spectacular final scene to his public career. The Commons were to be summoned to the Bar of the Upper House; the judges in their robes were to be present; and with every accessory of ceremony Bacon was to be sentenced for his crimes. The Usher and Serjeant of the House of Lords visited Bacon to inform him of the rôle he was to play. They found him too ill to leave his bed; and so the Lords were compelled to proceed in his absence.

The trial, which thus ended in an anti-climax, contains in its proceedings little that is dramatic. Accounts of it read much as other minutes of ordinary Parliamentary business under James I.

To understand the importance of Bacon’s trial it is necessary to know something of the man’s career. He was born on 22nd January, 1561, the youngest son of Sir Nicholas Bacon, Lord Keeper of the Great Seal, at York House, a mansion which stood to the east of what is now Villiers Street, Strand. He spent his childhood in the pleasant gardens of his London home or at his parents’ country house at Gorhambury, in Hertfordshire, learning his first lessons from his mother, the

daughter of Sir Anthony Cooke, tutor to King Edward VI. She was a blue-stocking of pronounced puritanical views, who translated volumes of sermons from the Italian and quoted Latin ceaselessly both in her conversation and her correspondence. Her husband, a humorous, easy-going man, bore with her, one suspects, as he placidly endured all that life brought him.

When the boy had entered his twelfth year he was sent to Trinity College, Cambridge, accompanied by his brother Anthony, his elder by two years. At Cambridge, Bacon immediately commenced the study of philosophy, and criticised the science of Aristotle, then held in almost universal reverence. In 1572 a new star had appeared in the constellation Cassiopeia, which, after burning in the sky for two years, vanished as suddenly as it had come. This phenomenon, occurring in a region which Aristotle had declared incapable of change, provided the youthful undergraduate with a ground for assailing "the infallibility of the Pope of Philosophy."

Christmas, 1575, saw the end of the brother's residence at Cambridge, and in the following year they were admitted to Gray's Inn, not as ordinary students, but—because they were sons of a judge—as "Ancients of the Inn." Not many months later Bacon interrupted his studies to go to Paris in the suite of Sir Amyas Paulet, Elizabeth's ambassador to the French Court.

His father's sudden death brought him hurrying back to London. He found that Sir Nicholas had procrastinated too long concerning his youngest son's patrimony; and, at the age of nineteen, Francis found himself faced with comparative poverty. To make any figure in the world, he would have to work for his living.

Accordingly he applied himself assiduously to the law, and in 1582 was admitted as an "Utter Barrister" of Gray's Inn. Two years later he entered the House of Commons for Melcombe Regis. He was launched on his chosen career of politics.

Bacon's first act, when he felt himself fledged as a Member of Parliament, was to compose a treatise, *Advice to Queen Elizabeth*, in which he advised her comprehensively upon the policy she ought to pursue in regard to a crisis threatening the solidity of the Church of England. To-day such a method of making a name in the political world appears fantastic; but

Elizabeth's Court, round which all politics revolved, was a fantastic society. The courtiers were corrupt, intriguing and faithless, forced by the parsimony of their mistress to descend to the least dignified expedients to augment their incomes. All depended on the caprice of a shrewd, but vain and hasty woman, who valued servile obedience more even than flattery, and whose caprices were as important to her subjects as the rise and fall of parties and cabinets have become to their descendants. The Queen's personal interest and favour counted for everything in such a world, and Francis Bacon was determined to win them. He seemed to have every chance of success. His appearance and manners were pleasant; he was the son of the Queen's late Lord Keeper, and nephew to Burghley, her principal adviser; Sir Amyas Paulet had written to her of him as "of great hope, endued with many good and singular parts, and one who if God gave him life, would prove a very able and sufficient subject to do her Highness good and acceptable service." Besides this, Elizabeth was a warm friend and patron of Gray's Inn, where to this day her name is honoured and her memory toasted. Apparently no young man could have rosier hopes of rapid advancement to great place and fortune than Bacon.

Yet year after year of flattery and hard work brought him no tangible rewards. The only crumb he gathered was the reversion of the Clerkship of the Council in the Star Chamber, worth £1,600 a year (equivalent to six times the amount to-day), and for that he had to wait four and twenty years. More than once he sought to convince Burghley how worthy he was to fill high office, and how convenient the great man would find it to have his intelligent and devoted nephew as his trusted lieutenant. To all his pleas Burghley replied coldly, though Bacon assured his uncle that he would not in any way interfere with the advancement of his cousin, Robert Cecil, Burghley's son.

Why did Burghley move no finger to help his kinsman? Was he moved by personal dislike and distrust? Did he genuinely fear for his son's career at the hands of a clever and unscrupulous cousin? Did he imagine in the Queen so fixed a disinclination to advance Bacon that he judged it foolish to attempt his preferment? The true reason for his coldness remains unknown. Perhaps personal distrust of his nephew weighed more heavily with Burghley than any other considera-

tion. He was a man of ponderous sense, cool judgment, and much shrewdness, uninspired by any spark of intuitive genius. His nephew was subtle, adroit, smooth and insinuating—the very type most likely to antagonise a man of Burghley's temperament.

Despairing at last of his uncle's interest, Bacon turned to the Earl of Essex, then rising to power as the Queen's closest favourite. Essex accepted him as his friend and adviser; and for three bitter years Bacon sued through his new patron for the place of Attorney-General, and then for that of Solicitor-General. He was unsuccessful. In disgust he uttered a vow that he would spend the remainder of his years in learned and studious seclusion at Cambridge, but to soothe his disappointment Essex generously presented him with land worth nearly £2,000.

Nevertheless, Bacon continued his pursuit of preferment, without much heed to dignity or principle. In 1597 he was reduced to the expedient of seeking a rich wife. Vehemently supported by Essex, he wooed the widow of Sir William Hatton, but the lady would have none of him. In the following year his possessions were so scanty that he was arrested for debt by an impatient creditor while he was on his way from "discharging the Queen's business at the Tower."

In 1601 Essex, having ruined his own fortunes by hot-headed wilfulness, gathered all his resources for the last desperate gamble which culminated in his childish "rebellion" and arrest. Prudent Bacon severed his connection with so alarming a patron before the crash came; and, when Essex stood his trial for treason, his former confidant rose in Court to prove that the prisoner was not only a traitor but also a liar and a hypocrite. Bacon occupied a peculiar position in the case; he was both counsel for the prosecution and witness. He could first give evidence and, a moment later, question the prisoner or address the Bench on his own testimony. He performed his task with fierce efficiency, and, largely owing to his speeches in Court, Essex was condemned and executed.

Bacon cannot be excused for thus aiding the ruin and death of his friend, but it is certain that he acted under some compulsion. Had he not contributed his evidence and his particular knowledge to the prosecution, he must have for ever abandoned hope of any preferment. Creditors clamoured round him; he was forty years old, and younger men seemed

to be outstripping him. The choice between loyalty to a friend and his own future was one which his temperament could only decide in one direction. He anticipated great rewards for his services. Actually he received only £1,200, without even the promise of a place. However, the Queen was growing old, and Bacon looked forward to her death with renewed hope. He had only to wait two more years.

Hardly was she in her grave than Bacon wrote to her successor, the pedantic, ungainly King James: "I think there is no subject of Your Majesty's," he protested, "who loveth this island . . . whose heart is not set on fire, not only to bring you peace-offerings to make you propitious, but to sacrifice himself a burnt offering to Your Majesty's service; amongst which number no man's fire shall be more pure and fervent than mine."

Despite all Bacon's fervour and wire-pulling, James was at first no more "propitious" towards him than Elizabeth had been. Bacon hoped that a monarch who flattered himself on his own learning would welcome him as a congenial counsellor; yet James made no sign that Bacon's appeals touched his heart or intrigued his intellect. A fresh financial crisis, which probably involved his arrest for debt a second time, drove him to appeal desperately to his cousin Robert Cecil not, indeed, for advancement—"for as for any ambition, I do assure your Honour mine is quenched"—but simply for credit to meet pressing bills, though he hinted that his retreat from the political arena might be cloaked in the decency of a knighthood. He further proposed to mend his fortunes by marriage with "an alderman's daughter, a handsome maiden."

This match was not concluded for three years, but Bacon had the satisfaction of being knighted in the King's garden at Westminster with three hundred others—judges, doctors of civil law, Court officials, and plain citizens. According to his declared intention, he should now have retired from the struggle in which he had fared so poorly for more than twenty years, but he could not restrain his itch to offer James advice. He felt himself so full of apt counsel—he could perceive a solution for every difficulty of policy—that he must expound it in writing and send it to the King. James was concerned for the pacific union of England and Scotland under his crown, and Bacon offered him a *Brief Discourse Touching the Happy Union of the Kingdom of England and Scotland*.



James acknowledged it graciously. It was the turning-point in its author's fortunes.

Delighted by this small triumph, Bacon followed it with a dissertation on the *Pacification and Edification of the Church*, directed to guide James through the tortuous theological mazes of the Hampton Court Conference. Soon afterwards he was warmly supporting the royal policy in James's first Parliament, where his zeal was rewarded by a pension of £60 a year for life—not very valuable to its recipient, but a clear token of royal favour, enough to start him again on a campaign of place-hunting. At last he was successful; his support in the Commons won the King's gratitude, and on 25th June, 1607, Sir Francis Bacon became Solicitor-General. He was fifty-seven years old.

Henceforward his progress was rapid. The lean days were ended. In 1608 his long-promised reversion of the Clerkship in the Star Chamber fell in; three years later James promised him the reversion of the Attorney-General's place, which he obtained in 1613. Yet into these years of important prosperity he carried the scars of twenty years' rebuffs and disappointments. He was a man to whom expediency had become the final criterion. Ambition consumed him; he would not be satisfied until he sat on the Woolsack. He had become so ingained a flatterer that it was said of him, not unjustly, that "he knew not his own mind till he knew the King's." The years of his struggles are more important for an understanding of the man than the years of his power, because they show by what a process the moral side of his character was spoiled.

As the most uncompromising upholder of James's prerogative in the Commons, Bacon continued his advancement. His cousin Cecil was dead, and could no longer stand as a barrier between Bacon and the King's inner councils. A new favourite arose at Court, George Villiers, with whom Bacon allied himself and whom he sustained with the ready advice he knew so well how to offer. With Villiers' aid and by his own assiduity in extending James's prerogative, Bacon became Lord Keeper of the Great Seal on 7th March, 1617, though he did not receive the office of Lord Chancellor until the following January, a week after Villiers became Marquis of Buckingham. Not many months later Bacon was created a peer with the title Baron Verulam of Verulam.

Bacon had arrived. He was rich and powerful, one of the

most important men in the realm. He had reached the highest position in his profession ; he had triumphed over all his enemies ; he had overtopped his old rival, Sir Edward Coke, with whom he had squabbled in Elizabeth's time, and saw him temporarily suspended from his duties as Lord Chief Justice of the King's Bench.

Lord Verulam kept his sixtieth birthday on 22nd January, 1621, in the house of his birth, celebrating the day by a great feast at which, among a great company of the celebrated and powerful, Ben Jonson sat down. Five days later James created him Viscount St. Albans. But within four months he was broken and disgraced, stripped of all his places and most of his fortune.

Observant in most matters, Bacon was too sanguine to perceive how bitter an opposition he had roused by that straining of the royal prerogative which had secured him the favour of James and the support of Villiers. In addition, he had made fresh enemies by enforcing monopoly patents in which the favourite and his relations were financially interested. These patents were, theoretically, licences granted to one person to retain for him a method of manufacture or some especial commercial enterprise, judged to be beneficial to the State. The abuse of this theory had so grown, that in 1620 a contemporary observer wrote : " The world doth even groan under the burden of these perpetual Patents ; which are become so frequent that whereas, at the King's coming in, there were complaints of some eight or nine Monopolies then in being, they are now said to be multiplied by so many scores."

Bacon himself was conscious of the anger aroused by this multiplicity of patents, and was anxious to cancel some of the more obnoxious before Parliament met on 30th January, 1621. The King, however, refused to budge, and left the matter to the decision of his Council ; try how he might, Bacon could not infuse his own anxiety into the members of the Council. When Parliament met, the patents were still in force.

On 5th February the House of Commons appointed a committee of grievances, which fell on a patent granted to one Mompesson. Coke was a member of the committee, and reported that this patent was " an exorbitant grievance both in itself and in the execution." Bacon had certified it as both legal and convenient. Thus he received his first wound.

James, alarmed by the truculence of the Commons, made

an involved speech to Parliament "to satisfy the Upper House that he was not guilty of these grievances which are now discovered, but that he grounded his judgment upon others who have misled him." James thus publicly threw on Bacon the blame for the Mompesson patent. The Lord Chancellor's enemies gathered themselves for the attack.

A few days after James's declaration, Sir Robert Phillips reported to the Commons that two petitions had been received, "charging the Lord Chancellor with corruption of his office." The first came from one Awbrey, pleading that he had made Bacon a present of £100, borrowed with difficulty from a usurer, in order that a suit which he had pending before the Lord Chancellor might be accelerated, that Bacon had accepted the money through the hand of a third person, and that he had been given a message assuring him "success in his business."

The second petition, of Edward Egerton, pleaded that he had made Bacon a present of a piece of plate, valued at £52, "as a testimony of his love"; that he had further "procured £400 and sent it to His Lordship . . . as a gratuity for what my Lord had done for him when he was Attorney-General," and that Bacon had "returned him thanks, saying he did not only enrich him, but laid a tie on him, to assist him in his lawful business."

The House of Commons, having examined the contents of the petitions, at once resolved that these complaints against Bacon "should be drawn up . . . and . . . related to the Lords, without prejudice or opinion, at a conference." On the same day James sent a message to the Commons protesting sorrow at the complaints against his Lord Chancellor; although "it had always been his care to advance the best men to places . . . no man could prevent such accidents." His Majesty proposed that a committee, composed of twelve members of the Commons and six members of the Lords, should probe the whole matter.

Meanwhile Sir Robert Phillips was active in unearthing new counts against Bacon. Soon no fewer than twenty-two counts were preferred, by which it was alleged that Bacon had benefited to the extent of about £9,000. The shock of so sudden and so overwhelming a disaster completely broke Bacon's health. Unable to appear before the Lords to answer the charges against him, he besought them by letter to keep an open mind concerning his case, to give him time to prepare his

defence, and allow him to call his own witnesses, to cross-examine those called by his accusers, and to answer the complaints against him one by one "according to the rules of justice."

When he learned in detail the charges against him, however, he realised that defence was hopeless. Nevertheless, as he recovered from his illness, his natural buoyancy reasserted itself, and he wrote to the King beseeching that "the cup may pass from him," arguing that James, by one means or another, could certainly quash the proceedings in Parliament. Surely, he declared, a humble submission and the surrender of the Seal would be punishment enough. He even went so far as to write: "Because he that hath taken bribes is apt to give bribes, I will go further and present your Majesty with a bribe. For if your Majesty give me peace and leisure, and God give me life, I will present your Majesty with a good history of England and a better digest of your laws"

Soon after this letter he sent his submission to the Lords. He attempted no justification. "It resteth therefore," he continued, "that, without fig-leaves, I do ingenuously confess . . . that . . . having understood the particulars of the charge . . . I find matter sufficient and full, both to move me to desert the defence, and to move your Lordships to condemn and censure me. Neither will I trouble your Lordships by singling those particulars which I think may fall off. *Quid te exempta juvat spinis de pluribus una?*" He proceeded then to tell their Lordships a long story from Livy, striving to show that a slight penalty may well prove as useful deterrent as a savage one. This remarkable document ends with a prayer that "God's Holy Spirit be amongst you."

After this submission had been read to the Lords, silence fell on the House for several minutes. Then the Lord Chamberlain spoke. "The question," he said, "is whether this submission be sufficient to ground your Lordships' judgment for a censure without further examination." This commonplace remark broke the tension, and the House debated earnestly, finally deciding that there was "no word of corruption in his submission." They resolved not to proceed further without Bacon's express confession of corruption. He sent it briefly and immediately.

When the House had heard it, as it pitifully set out each sum of money he had received from each suitor, they sent a

committee of twelve Lords to wait on Bacon, to inform him that "they conceived this to be an ingenious and full confession," and to ask him if he would stand by it. "My Lords," replied the fallen man, "it is my act, my hand, my heart: I beseech your Lordships to be merciful to a broken reed."

The twelve Lords called back his answer, and the House petitioned the King to sequester the Great Seal, which was given to Lord Chief Justice Sir Robert Hutton. Next Bacon was summoned to receive his sentence, but fresh illness prevented this humiliation. Accordingly the Lords, having agreed *nemine dissentiente* that "the Lord Chancellor is guilty of the matters wherewith he is charged," proceeded to disagree on his punishment. His enemies wished to degrade him from his rank, but his friends opposed them. But not even his staunchest allies could continue to protest his worthiness to hold office, and even the Earl of Arundel, a close friend, confessed "his offences foul, his confession pitiful." When the final division was taken as to whether "these punishments above shall be inflicted on the Lord Viscount St. Alban or no," only one peer voted against the motion.

Bacon refused to be dismayed by his ruin. He set about salving a competence from the remnants of his fortune, and implored James to employ him privately. He wrote, full of hope, that "your Majesty, that did shed tears in the beginning of my troubles, will, I hope, shed the dew of your grace and goodness upon me in the end. Let me live to serve you; else life is but the shadow of death to your Majesty's most devoted servant."

Despite the fact that the prior royal claim to £40,000 worth of his property protected Bacon from his creditors, the disaster to his finances was complete. York House and Gorhambury went, and their owner hid himself in chambers at Gray's Inn, whence he had set out on all his adventures. That society, of which so few months before he had been the principal ornament, received him in his adversity, and comforted him with the loyalty and society of its members. When most of his former friends and clients deserted him, his Inn restored him, without passing judgment or comment, to his accustomed place among the Benchers.

He lived on for five years, devoting himself to his literary and philosophic work. James I died in the spring of 1625;

a year and some few days later his Lord Chancellor followed him to the grave.

Two questions remain to be answered : What degree of guilt can be assigned to Bacon ? And, if he was guilty, how came it that a man of such transcendent ability could be tempted by the paltry amounts which he admitted to have received ?

Students of history appear to be agreed that Bacon did little more than follow the custom of his age in accepting "presents" from suitors. "If I were to begin to punish those who take bribes," James I once remarked to the Spanish Ambassador, "I should soon not have a single subject left." A large part of Bacon's legitimate receipts as Lord Chancellor came from the "gratifications" paid to him by those who had received his verdict in their lawsuits. He certainly received such monies in the normal course of business, as all men might know. He also certainly accepted money from those whose suits were pending, but—as he himself pointed out—it has never been shown that such gifts ever influenced his judgments. No complaint was directed against his administration of justice ; had such complaints been feasible, it is certain that they would have been made.

Why, then, did the Commons so press for Bacon's condemnation, and the Lords, for the most part, support their insistence ? The malignity of such enemies as Coke was not enough to inspire so great unanimity ; and although the best opinion of the age was beginning to consider the acceptance of "gratification" from litigants as an evil, the general conscience was not profoundly stirred in the matter. Most of the corruption to which Bacon confessed was the result of a system in which Members of both Houses indulged—they could not pretend intense surprise or indignation when the details of his transactions were made public.

The truth, I imagine, is that the Commons were highly and justly incensed at Bacon's policy concerning monopolies. He constantly declared himself the King's Minister, responsible to James alone, and thus in no way answerable to Parliament. His constant expansion of the royal prerogative and his policy of acting as the King's creature were obnoxious. The passions which were to remove James's son from his throne were already awakening, and Bacon fell victim to Parliament's desire to control the Ministers. Vaguely the Commons felt that in his

disgrace they vindicated the doctrine that Ministers were responsible to them and not to the King in Person.

Concerning Bacon's character discussion will never cease. This biographer condemns him as an intellectual genius devoid of moral scruple; that historian defends his conduct in all circumstances by means of elaborate casuistry. Perhaps the most convincing explanation of his peculiarities follows from the suggestion that he chose wrongly when he decided to enter public life.

Bacon ever lamented the fact that he had chosen an active life, and had not confined himself to science and philosophy. How far these protestations were sincere it is hard to judge. Many successful men are wont to declare that they wish they had followed some other, generally a less conspicuous, occupation. They know, however, when making such confessions, that their sincerity will never be tested by circumstances.

During his twenty years' suit for advancement the fibre of his conscience certainly coarsened. Disappointment, long enough continued, will drive most men to methods which once they would have scorned. Bacon himself wrote that "sometimes by indignities men rise to dignities"; and his career shows how thoroughly he applied the maxim. Had he not decided to make himself a "politique," had he chosen to devote himself entirely to those philosophic "pleasures of the intellect" which he classed higher than all others, he might have lived a blameless life, and enriched learning and literature thrice as much. He would certainly have been happier. An ambition foreign to his real character entered his heart, consumed his years, and finally broke the career which he had been at such pains to build.

He himself, during the "long cleansing week of five years' expiation and more" which followed his fall, recognised the justice of his punishment. "I was the justest judge that was in England these fifty years," he wrote, "but it was the justest sentence in Parliament that was these two hundred years."

*Mrs. Maybrick*





## MRS. MAYBRICK

**F**LORANCE MAYBRICK was by birth American, and married James Maybrick in 1881 at the age of eighteen. He was then forty-two. The marriage lasted eight years, so that she was but twenty-six when she played the foremost part in one of the memorable trials of the nineteenth century.

Maybrick was a cotton merchant, and in 1889 had been for some years settled at Liverpool. He and his wife had many acquaintances, and their reputation was that of an average married pair.

Apparently no organic disease troubled the husband. He was a healthy man of fifty, but for some years, even before his marriage, he had been taking drugs as a tonic, and had apparently boasted of their dangerous nature.

Towards the end of March, 1889, Mrs. Maybrick went to London, and there for some days she stayed with a man named Brierley as man and wife under the name of Maybrick. There was no evidence that her husband ever knew or suspected this incident, which seems to have been an isolated one. He did, however, resent Brierley's attentions to his wife at the Grand National on 29th March, so much so that on his return home he made a violent physical assault upon her. In consequence she prepared to leave him, but friends intervened, and they were, or appeared to be, reconciled.

In April, Maybrick went to London to consult a doctor about his health, a constant and increasing cause of worry to him. He stayed with his brother, who told him that Mrs. Maybrick had written saying that her husband was taking a white powder which she thought was strychnine. His comment was that the statement was a "damned lie." He returned on 22nd April. The next day or the day after Mrs. Maybrick purchased some fly-papers, which contained arsenic. There was no concealment. The chemist knew her and they were sent home. She used them by soaking them in water in her bedroom. This was done openly; at least two of the maids, for instance, saw them at the time. After the death,

for either hypothesis, and probably the conversation has no significance.

It was on this day that Maybrick quite definitely began to sink. His relations were summoned, and early next morning the doctors abandoned hope. He gradually sank and died at 8.30 in the evening. His last illness had lasted eight days. Mrs. Maybrick fainted before his death, and remained unconscious for many hours. At once search was made for arsenic, and it was found in many places. Traces were found in Mrs. Maybrick's garments. The packet already mentioned was in her trunk, and arsenic was found in the dead man's belongings, in the house, and also in the medicines, where, according to the prescriptions, there should be none, and, according to the chemists, there were none when they were compounded. His numerous bottles of medicine at the office contained no arsenic, but the jug he had taken there contained traces. The post-mortem showed inflammation of the stomach and intestines, and rather less than half a grain of arsenic was found in the body.

Until the 14th Mrs. Maybrick was too ill to be charged, but on that day she was arrested. Popular opinion was vehemently against her. At the police court she was defended by Mr. Pickford,<sup>1</sup> on whose advice she reserved her defence, and on 14th June she was committed for trial.

That year the Assizes at Liverpool opened on 26th July, with Stephen J. presiding. The Grand Jury duly returned a true bill. On 31st July the trial opened, and lasted until 7th August. The jury were absent for about three-quarters of an hour. On their return she was found guilty.

I do not propose to comment at length on the trial. The counsel engaged were men of the greatest eminence, and the trial was conducted with fairness. A great deal has been made of the fact that Mrs. Maybrick made a statement. The law then did not permit an accused person to give evidence on oath, but she had, and would to-day still have, the right to make a statement. Forensic opinion was indeed against the exercise of this right, save in exceptional cases. Mrs. Maybrick's statement certainly did her cause no good, but it is not, I think, on the whole, just to criticise Sir Charles Russell. An advocate's duty is to put his client's case, but, after all, the case is not his but his client's. If a client insists

<sup>1</sup> Afterwards Lord Stensdale, M.R., a very learned judge.

upon a course which is not improper but may be injudicious, counsel should, and does, advise against that course; but if the client insists, then he and not counsel is *dominus litis* and must have his way. In extreme cases counsel may decline to continue, but it would be unthinkable to do so during a trial for murder merely on a point of tactics. We do not know whether Sir Charles advised for or against the making of this statement, but assuming (as in all probability was the case) he was against that course, yet if his client insisted it was her right.

In his final speech Russell took this line. After reminding the jury that the case must be proved beyond reasonable doubt, he challenged the hypothesis that Mrs. Maybrick had a motive to murder or was such a person as would murder her husband. Her whole behaviour contradicted such a hypothesis. Death was due to gastritis or gastro-enteritis. It might have a natural cause, and the evidence was inconsistent with arsenical poisoning. Moreover, it was virtually impossible for her to have administered the arsenic. Maybrick took arsenic. The fly-papers had nothing to do with the case, and the powder came from Maybrick. If, therefore, arsenic was used, it was not by the prisoner.

The summing-up was fair and impartial. It certainly contained slips on many details, though the Judge was a master of detail, but none of the slips was more than incidental. No reliance can be placed upon the fact that some years before the Judge had had a serious breakdown. It is true that he was never the same man again, but he had recovered sufficiently to administer justice properly and acutely both before and after this trial, and his subsequent unfortunate illness and retirement can have no bearing on the question.

Popular opinion is ever fickle. When the magisterial hearings began, the prisoner's advisers despaired of an impartial trial at Liverpool, so fiercely was emotion stirred against her. But when the Judge had passed sentence of death, his stately progress from the Court was marred by the hisses of the same people disappointed at a result which they had eagerly coveted but a few weeks before.

Mrs. Maybrick was at once reprieved, and after many years' imprisonment she was released. She soon went to America, but did not survive for many years.

Nearly forty years have passed since then, but Mrs.

Maybrick's guilt is still discussed and questioned. There can be no doubt that her case must be both unusual and important, since it has retained its interest for the public, in spite of the many interesting and notorious cases which have been before the Courts from time to time since her day.

The reason for the sustained public interest are not easy to analyse. The position of a wife charged with the murder of her husband, though happily rare, is by no means without precedent. Even the fact, if it be the fact, that she was administering the poison under the cloak of devotion, that the tender nurse was the calculating assassin, is not unknown in other cases. But she and her husband were well known. Their reputation was that of an affectionate pair, and it excited the interest of the vulgar to learn in the course of the trial that in fact their married life was not so untroubled as appeared on the surface, and that, whether he knew it or not, she had been unfaithful to him. But for that lapse she might have had the sympathy of the public from the start, instead of the belated reaction which marked the closing stages of her trial.

The toxicologist certainly is attracted to this trial. It marks a stage in the history of the use of arsenic for poison. It is true that arsenic is one of the most common poisons to which murderers have recourse. Indeed, distinguished physicians have been heard to complain of the wearisome repetition of arsenic as a means of compassing death. At first, when arsenic was a new drug, experts were confounded. They were almost helpless as an aid to justice in the presence of a Mme de Brinvilliers. By the second half of the nineteenth century chemistry had come to the aid of the physician. Gradually the experts were attaining the knowledge which made them so skilful and precise in such cases as those of Seddon and Armstrong.

Madeleine Smith had been tried in 1857 on a charge of murder by arsenic. There could be no doubt as to the cause of death, since 82 grains were found in the man's stomach. The expert in that case was hardly necessary, but he did state his opinion as to the fatal dose and the period that it would take to bring about death. His view, which reflects the best scientific knowledge of his day, was that four to six grains constituted a fatal dose and that death might be delayed as long as two or three days after its administration.

It was clear from the evidence that Mrs. Maybrick was deprived of the opportunity of administering poison in the early afternoon of 8th May. Her husband died on the 11th. Dr. Stevenson, who was the great authority in 1889, said in his evidence that a fatal dose, which was then known to be two grains or even less, generally killed in six to twenty-four hours, and he took twelve hours as a fair average. He added that a repetition of small doses would take longer. But if, as the evidence established, the accused could not have administered any arsenic after 8th May unless she evaded the vigilance of three trained nurses, warned to prevent it, the length of time before Maybrick died was a serious obstacle and one which was not really faced. I am aware of the evidence as to the subsequent tampering, but the attempt, if it was an attempt, did not succeed. Indeed, the patient grew better until the 10th, when he began to sink. In the light of the evidence in Armstrong's case the difficulty, serious in 1889, would not now be acute. Sir Bernard Spilsbury was prepared in Armstrong's case to admit that the decisive dose might be administered as long before the death as five to eight days, even where the patient had no organic disease. We may, therefore, in considering the case now, assume what we could not have assumed in 1889, that the death may have been due to an administration on or before 8th May. We are no longer driven to surmise an administration after that day as to which there was no evidence—in the face of the elaborate precautions to prevent such a misdeed.

There can be no real dispute as to the cause of death. Maybrick died of acute inflammation of the internal organs. Arsenic was found in his body. But two circumstances operate to minimise the importance of these facts. One was that the deceased was given to the taking of drugs, dangerous drugs, including at times arsenic itself. The other was that during his last illness his medical advisers rang the changes on a large number of medicinal preparations, some of them containing highly dangerous ingredients, including arsenic. Many thought that, though the arsenic prescribed was not a large quantity, neither was that which was found in his body, and the gastric condition—the most prominent and important symptom found at the post-mortem examination—might plausibly be attributed to the ill-usage to which his internal organs had been subjected for so long.

The prosecution relied upon the purchase of arsenic in the form of fly-papers—the way in which Seddon may have obtained his supply. But the curious fact is that there were larger quantities of arsenic in the house, though there was never any suggestion that Mrs. Maybrick had purchased anything but fly-papers. If she had obtained the supply, there would have been no need to buy the fly-papers—whatever her reason for wanting arsenic. Those that she did buy she purchased openly from people who knew her. She used some and did so openly in the house, and a bottle containing a weak solution of arsenic, obviously derived from soaking them, was found. The remainder were left until the maids destroyed them. Mrs. Maybrick said that she wanted them as a cosmetic. Whatever the value of arsenic for such purposes, there is no doubt that many believed it was useful for the complexion, and consequently there is no inherent improbability in her explanation. But what about the large quantity of arsenic not attributed to her? It is at least not unreasonable to think that Maybrick himself had bought it. He was given to dosing himself, and it may well have been that he had bought it for that purpose, or for some other purpose, and was using it. Once that becomes an admissible inference, there is a probable explanation of all the awkward circumstances, and it puts Mrs. Maybrick's statement in Court in a much more favourable light.

I am not unmindful of the fact in Vaquier's case that, though the prosecution only traced to the accused a small quantity of poison, after his conviction Vaquier revealed a large store of the poison hidden on the premises. How and where it was obtained could not in that case be discovered. But the circumstances were different. The discovery was due to the accused, who alone knew of its existence. In the Maybrick case there was no ground for suggesting that Mrs. Maybrick had obtained it. Still, all things in a house are, in a sense, in the possession of the housewife, and there was a great deal of arsenic in that house.

There was one incident of tampering much relied on by the prosecution. Evidence was given that Mrs. Maybrick had been seen doing something with a bottle of meat-juice, and this bottle, carefully kept, was analysed and found to contain arsenic. Mr. Davies, the analyst, thought that this had been added in the form of solution. There was, he said, no solid

arsenic there, and, further, the specific gravity of the meat-juice in that bottle was less than that from a bottle freshly bought. Something was added to that bottle. The accused admitted it. She said that her husband had given her a powder to put in his food. She was then under suspicion, but she yielded to his entreaties. She went into the inner room and added the powder, but, upsetting the bottle by accident, she had added water to make up the quantity. One wonders why, seeing that the loss of even a whole bottleful meant little to persons of their means. Moreover, it is extremely doubtful if water could be added without the fact being obvious immediately. But the great objection to the truth of her explanation is that, though arsenic is soluble, it is not readily soluble, and it is therefore highly improbable that, if it were added as a powder, all the grains would or could have been dissolved.

The contents of the bottle were, indeed, never used. But if something was added, added by Mrs. Maybrick, and if that something was arsenic, added as a solution, then, Mrs. Maybrick's explanation being set aside as inconsistent with the facts, the prosecution had gone far to discharge the burden of proof. It would not, of course, establish guilt, but if she had wilfully added arsenic to his food, which was not given to him because of the action of others, might she not have done it on occasions when there was no one to watch and no one to intercept the food on its way to the patient? One must not forget that arsenic would account for the symptoms and would cause death, and that arsenic was found in the body after death.

To a lawyer, the case is of interest as one involving serious and complicated issues of fact. The Counsel for the Crown were men of eminence and ability. Mr. Addison became a respected and able County Court Judge in London. Mr. McConnell was afterwards Chairman of the London Sessions, and though Mr. Thomas Swift, who was highly esteemed in Liverpool, never attained that position in the law which his own abilities merited, he is remembered to this day with affection both for his own sake and that of his son, the present Mr. Justice Swift. Formidable though the Counsel for the prosecution were, they were overshadowed by their opponents. Sir Charles Russell (Lord Russell of Killowen) was then at the height of his fame; he was assisted by Mr. Pickford, then a



"local" at Liverpool, who died recently as Lord Sterndale, Master of the Rolls.

Russell never relaxed his efforts on Mrs. Maybrick's behalf. The first Sir George Lewis, who indeed ought to have been in a position to know, is said to have stated that Russell was actuated not by a belief in her innocence, but by a conviction that her guilt was not established. I had at one moment, when planning this examination of the case, thought of asking Sir George's son, who succeeded to his practice and reputation, for an authoritative statement, but death has prevented the inquiry. Nor probably should I have thought it right to make it. The case has not passed deeply enough into history. It may have been that the great advocate, believing that on the evidence the verdict was wrong, deemed the result in some way to be imputable to him and so endeavoured to put his client in the position, as far as was possible, which in his view she should have been placed by the verdict. But I cannot think that this is the explanation. If his view was that she was really guilty, but not proved to be such, then I cannot see why he should have striven so earnestly and so long, not to save her from the gallows, but to secure her release, seeing that, in such a case, she was only technically an innocent woman.

However, I cannot myself resist the conclusion that there was evidence upon which she could have been found guilty. Lord Russell died before the institution of the Court of Criminal Appeal, but he was familiar with the principles upon which appeals are decided. Even if he disagreed with the jury's decision, he must have recognised that it was impossible to contend that there was not sufficient evidence, if the jury accepted it. He had fought the case frankly on the assumption that there was a case to answer. He made no attempt to induce the Judge to bring the case before the Court of Crown Cases Reserved, as he might have done. I feel certain that he was convinced that, whatever the evidence might indicate, she was in truth and in fact an innocent woman, and in that belief thought it his duty to aid her as a man, when as Counsel he had no longer any opportunity to help.

No one knows what Pickford thought. Once at a Liverpool dinner on the Northern Circuit Sir Leslie Scott said to him: "I never heard you express an opinion upon the guilt or innocence of Mrs. Maybrick." "I never did," was the reply, and that was all he would say.

The Judge, too, died without expressing an opinion. He did, indeed, mention in a book that it was the only case referred to the Home Secretary of those which he tried about which there could be any doubt as to the facts.

What, then, is the answer that should be given to the question: Was she guilty? We can now approach the case without any feeling which might prejudice our judgment, but also without the advantage that is gained by seeing and hearing the witnesses. A study of the evidence is no adequate substitute for the gradual expression of that evidence by witnesses whom we can see and hear. Gestures, changes of intonation, pauses, and all those incidents which enable a bystander to judge of the truth or materiality of a reply, are not reproduced in a shorthand note.

On the whole, I think that if I were a juror in a civil action, judging by the probabilities, I should have found against her. But on a criminal charge, where a reasonable doubt entitles to acquittal, I should have acquitted. But if I had to consider the case on appeal, I should hesitate very long before I could see my way to disturb the verdict.

In any case, whatever one may think, one has to face the question: How did the arsenic come to be in the medicine?





JAMES, DUKE OF MONMOUTH  
(After the painting by Sir Peter Lely)

*See page 465*



ANNE, WIFE OF JAMES, DUKE OF MONMOUTH  
(After the painting by G. Kneller)

*See page 465*

## *Major Strangers*



## MAJOR STRANGWAYS

**F**EW nowadays have heard of pressing to death as an incident of English legal procedure. To those who have not it will be a surprise to learn that in the days when judges ruled, and men boasted, that torture found no place in the administration of justice in England, it was nevertheless possible for an unconvicted man to be sentenced to a degrading and barbarous death merely because he refused to repeat a time-honoured phrase.

We are accustomed to think of trial by jury as a peculiar and peculiarly satisfactory characteristic of English justice. But it was not always the only, nor even the accustomed, method. Our forefathers in Anglo-Saxon days believed in compurgation and the ordeal. The Normans introduced trial by combat. None of these methods was found satisfactory. Indeed, in many instances a summary proceeding uncommonly like lynch law was adopted. In administrative matters the investigation by inquest had early been tried. Domesday Book was compiled by a proceeding resembling an inquest. Within a hundred years of the Conquest the true inquest made its appearance, and when the Lateran Council forbade the ordeal the administrators of justice found the new method available and gladly adopted it. But in those days a change of procedure was not to be accomplished by a mere order of the judge or a rule of Court. An inquest was a proceeding authorised by the King, and for a time at least, unless the King were dead, there was no right to adopt this procedure.

As it was more just, prisoners charged with felony naturally began to prefer the method, but when it became the only practical mode of trial, judges appear to have shrunk from imposing it upon accused persons. It originated in a boon conferred upon those who were prepared to pay for the privilege, and was not the ancient and accustomed course. Consequently, without the prisoner's consent, the trial could not proceed. This in course of time would cause a deadlock



so soon as all other methods had become obsolete. But the judges were not there, after all, to see the law stultified.

The prisoner could not be tried without his consent. Very well. One can imagine how the procedure developed. A man awaiting trial was normally under arrest. The recalcitrant prisoner could therefore be detained. But this course was undesirable. Prisoners were not secure and gaolers were not paid. No one would wish to keep the rebel for long. So mere detention would hardly meet the case. Unpleasant detention might, and so rigorous treatment as to the place of confinement and diet would be obviously a means of constraint. A dark, noisome underground room, shackles, insufficient and unpalatable food to eat, and noisome water to drink would soon change the mind of all but the very stubborn. Trouble then would only arise with an unusually obstinate man.

Under Henry IV the judges seem to have taken a stronger line. Whether they were more impatient or there were more prisoners of the stiff-necked variety one cannot say. But the judges then began to direct that physical means should be adopted to enforce a speedy consent. There were several devices—one was to tie the prisoner's thumbs and by twisting the cord, or suspending him by it, compel him to consent to end the torment. Another, which became the normal course, was to direct the infliction of the *peine forte et dure*. The prisoner was to be pressed to death unless he sooner revised his views and elected to plead. The old method might take weeks. This at most could only last a few days.

This grisly device can be imagined from the words of the order in Major Strangeway's case.

The Court directed :

"That the prisoner be sent back to the place from whence he came and there put into a mean room where no light can enter, that he be laid upon his back with his body bare, save something to cover his privy parts, that his arms be stretched forth with a cord, one to each side of the prison, and in like manner his legs shall be used, that upon his body shall be laid as much iron and stone as he can bear and more, that the first day he shall have three morsels of barley bread and the next day he shall drink thrice of the water in the next channel to the prison door, but no fountain or spring water, and this shall be his punishment till he dies."

We cannot now find any justification for this terrible treatment of an unconvicted prisoner. The law presumes a man is innocent until he pleads guilty. Granted that, as he was accused of felony, he ought not to bring the course of justice to a standstill, nevertheless there should have been less uncouth and inhumane means of compelling a trial. It is true that the sentence was mostly only held over prisoners *in terrorem*, and consequently only a very few refused to plead when they found that the sentence of pressing would certainly be passed. It is true that only one or two in the course of a century would be found to persist until they were brought to the place of torment. It is also true that in the whole history of the law hardly anyone went so far as to undergo the commencement of the ordeal, and but a very small number endured even unto death. Granted all this, there was no real justification for this procedure, inasmuch as Parliament could have intervened and provided for trial notwithstanding a refusal to plead. Not till 1772 did the Statute Law intervene, and then only to declare that a man who refused to plead should be taken to be convicted. It was not till 1827, a bare hundred years ago, that the sensible rule was adopted that a deliberate refusal to plead was not an admission of guilt, and consequently the real solution was to proceed with the trial in order to ascertain whether the prisoner was guilty or not.

It may be asked, Why should a prisoner give all this trouble? There was, of course, a serious reason. In those days conviction for felony entailed forfeiture and corruption of blood. There were exceptions, which, after all, were only exceptions to the rule. Conviction, therefore, meant as a rule a lingering and painful death, as hanging then was. Pressing to death was worse, but not too markedly more painful. A prisoner who was without hope of acquittal or reprieve knew that, by his condemnation, not only was his life forfeit, but his wife and family beggared and deprived of all hope of inheritance from others. If, therefore, he could steel himself to be pressed to death, then he would die unconvicted. At the price of additional suffering he would purchase for his family his possessions and their chances of succession. In such circumstances a man might well consider whether it was not worth while. But he could always end the matter by consenting to plead, and it is small wonder that most of those who essayed the proof failed to last it out.

The old procedure of arraignment bears the history of procedure in its phrases.

"Prisoner at the bar," said the Clerk of Assize, "hold up your hand.

"You stand indicted by the name of —— for that . . ." and then followed the reading of the indictment, at the end of which the Clerk continued :

"How say you—are you guilty or not guilty?" and the prisoner was then expected to plead.

If he pleaded "Not Guilty," there was a further question :

"Culprit, how will you be tried?" And the accused replied : "By God and my country." To which the Clerk rejoined : "God send you a good deliverance."

The word "culprit" means one who has pleaded "Not Guilty," though in correct usage the word denotes an actual offender. It is believed that the expression "by God" refers to the ordeal, "the Judgment of God" and the latter certainly means "by a jury." Probably at first the Clerk asked which course was chosen by the accused, but doubtless accused persons were loath to abandon an expression which might signify their trust in the help of God. However that may be, the whole expression was essential, and if any part of it were omitted the plea was bad and the trial could not proceed. It was part of the gaoler's duty to instruct the prisoners what to say.

Unless the accused would answer these questions the Court was deprived of the power to determine the issue. The procedure then was to try the issue whether the accused were "mute of malice," i.e., was contumacious or "mute by the visitation of God," i.e., was physically unable to plead. It is odd that, though the guilt or innocence of a prisoner could not be determined by a jury without his consent, this issue was tried by a jury without his consent even being asked. It was only those who were mute of malice who were subjected to compulsory measures. Major Strangeways was one who defied the Court. He would not plead, and, persisting in his refusal, he was actually pressed to death.

George Strangeways was a man of standing. His father was the head of a Dorsetshire family, and he himself gave promise of an honourable career. He was tall and athletic, his disposition was frank and generous, and his friendship was valued both for its own sake and for the sound advice for

which he was noted. He chose the career of arms and served in the Civil War under King Charles. He distinguished himself by his bravery and was promoted Major. He remained staunch to the Royalist cause until it collapsed under defeat. His adherence to the Royalists rendered him liable to sequestration and fine. This risk was no small one, since by his father's death in 1674 he succeeded to the family estate.

Steps had been taken to minimise the risk. His elder sister, Mabellah, had been appointed executrix, and an arrangement was made whereby she took a lease of the estate and gave a bond to her brother to secure payment for the stock. Everything, therefore, passed to her legal possession, and she remained in charge, having even the title-deeds and bonds. In course of time Major Strangeways quitted the field and took up his abode with her. He was not molested, and so they lived for several years. No doubt, having regard to his sister's age, he thought that the arrangement would outlast their lives. Neither of them had married nor seemed to have any inclination to matrimony.

Nevertheless, the unexpected did happen. Living at Blandford was a respectable elderly lawyer named Fussel. He was a widower, and, meeting Miss Strangeways, he became minded once again to take a wife. She was willing, and Major Strangeways was informed of her intention. He was furious. Probably he considered Fussel was beneath his sister. One may surmise that the bridegroom was of the opposite party, but in any case the marriage meant the end of his plans, which had so far worked well, and in objecting he did not mince his words. He went so far as to declare that, if she did marry the man, he would kill him.

Miss Strangeways was equally determined, and their difference led to a parting, and the parting to the imperative need of settlement. The marriage necessitated Fussel being a party, and negotiations led to a rupture. Each side alleged that the other was guilty of fraudulent practices and designs, and litigation became inevitable. The scene therefore shifted to London, where both Fussel and Strangeways repaired for advice and counsel.

Major Strangeways' army service led him to take the view that the best solution was to fight it out. He wrote to Fussel, challenging him, as though an elderly peaceable lawyer could meet an experienced soldier in the prime of life on equal terms.

It was as unfair as Strangeways no doubt thought a lawsuit was when the other party was a lawyer. Fussel took the obvious course of indicting his opponent for sending a challenge, and this sealed his doom. As he would not meet his brother-in-law in open fight, the latter appears to have persuaded himself that he would be justified in killing his enemy.

It was the early part of 1658, though, as the year then began in April, people called it the end of 1657. Fussel had taken lodgings on the first floor of a house near Temple Bar. His living-room looked out on the street. Strangeways was staying in the Strand, not far away.

One evening early in February, 1657-8, Fussel came in soon after nine and sat down at a writing-desk facing the window. At this time of the year it was dark. The window was closed and shuttered, but there was a small uncovered portion, through which the light of the room shone into the dark street. Fussel's face would therefore be visible to a watcher on the outside. He was writing, and his clerk was also busy in the room.

As he worked, he suddenly, for no apparent reason, appeared to lay his head on his work as though he had fallen asleep. His clerk, who seems to have heard nothing, became curious, because his master was not wont to fall asleep at his work. He crossed the room to look, and found that Fussel was dead. He had been struck by two bullets, one on the forehead and one in the mouth. A search afterwards revealed a slug buried in the outer woodwork of the window. It is singular that, even at that hour, no one in the street or houses seems to have heard any report of firearms.

The clerk raised an alarm. A search was made, but the street was dark and deserted. The watch were called. It was obvious that a murder had been committed, and so they proceeded to make arrests. The first to fall into their clutches was a lodger in the house. The evidence against him was merely that he was not in at the time. When he did arrive he was placed in custody. However, he was not detained long.

Mr. Fussel's son by his former marriage was near at hand. He at once recalled Strangeways' threats, and on the strength of this he was at once arrested, though his landlord and the people in the house declared that he had never stirred out. He was taken before a Justice of the Peace and committed to Newgate.

Even the watch could see that the evidence was insufficient. The justice determined to try an experiment which was then deemed an infallible method of detecting a murderer. The next day, on the occasion of the inquest, Major Strangeways was brought from Newgate and made to take the dead man's hand. By all the rules, the wounds should at once have bled afresh. But this phenomenon did not occur, and reluctantly they reconducted the prisoner to Newgate.

The coroner's jury then began to discuss how they could obtain evidence in more practical ways. The foreman conceived the idea of making inquiries of all the gunsmiths in London. He seemed to think it was plain that the murderer acquired his weapon on the day of the murder. A fellow juryman, named Holloway, thought the suggestion unpractical. There were too many gunsmiths in London, and they all sold or lent out such weapons every day. Why, he himself was in the trade, and on the day of the murder he had lent a carbine to a customer. The foreman thought that this at least was a clue worth following, and asked who was the customer. Holloway had some difficulty in recalling the name, but at last remembered that it was Major Thompson, who had served in King Charles's army.

This detective work led to the discovery of the evidence. Messengers at once went to Thompson's house, only to find that he had gone into the country. But the authorities seemed to have an unfailing recourse. As Mrs. Thompson was at home they arrested her.

This was the third arrest, but here there was no suggestion of guilt. It was a mere device to bring her husband back, and, however doubtful its legality, it certainly succeeded. Major Thompson returned hot foot, and went before a Justice of the Peace.

His information was startling. He had indeed borrowed the carbine at Major Strangeways' request. His friend had said that he wanted to hunt a deer, and asked him to borrow a gun. Why he could not do it himself is not clear, but probably the indictment for challenging might prevent him. Major Thompson accordingly borrowed the carbine, loaded it with two bullets and a slug, and handed the loaded weapon to Strangeways in St. Clements' Churchyard between 7 and 8 o'clock in the evening on the day of the murder. This was shortly before the murder, and only a few yards away from the

spot. And the gun that killed Fussel was loaded with two bullets and a slug.

Furthermore, said Thompson, Strangeways brought back the carbine to him between 10 and 11 o'clock the same night. It would be a curious kind of deer, even under the Commonwealth, that could be hunted in the Strand. This evidence, too, proved that Strangeways was out of doors that night, both at 8 and 10 o'clock, just before and just after the murder.

Strangeways was at once informed of this new evidence. He was at first struck dumb, but when he recovered himself he acknowledged that the finger of God must be in this. He then admitted that he had concocted an alibi. He had slipped quietly out, leaving a friend in his rooms, whose movements were mistaken for his own. Afterwards he slipped back as quietly, and his friend went away also without making a noise. That friend, whoever he was, must have known more than he should have done, but Major Strangeways never revealed who he was. The people at his lodgings had been honest in their evidence.

It seems probable that Strangeways fired the shot himself, but he never admitted it. His admission was merely that it was fired by his direction. Why the report was never heard was not cleared up. Presumably the shot was fired from a house opposite, but that is mere conjecture.

The case was now complete, and Strangeways was committed for trial. He had not long to wait. On 24th February, 1657-8, Mr. Serjeant Glyn, who was Cromwell's Lord Chief Justice, presided at the Old Bailey when Strangeways was brought up to plead.

On his arraignment he did not plead. He began to make conditions. He would plead, he said, if he were assured that he would be shot like a soldier. If not, then he would not stand his trial. Thereby he would at least save himself from death on the gallows and his estate for his friends. The Lord Chief Justice tried to alter his resolution, pointing out the consequences, but in vain. All that the prisoner would say was that whoever fired the gun did so by his direction. He persisted in his refusal, and at last the Court ordered him to undergo the *peine forte et dure*. The 28th February was appointed as the day.

Accordingly he was brought to the Press Yard at Newgate,

at eleven in the forenoon. He was accompanied by divines and friends. Before he was prepared, he declared that he died as a Christian and at peace with all men. He was then stripped and stretched out on the ground. A request that he should be placed on boards with a projecting piece, so that he should the sooner die, was refused. He desired his friends to add their weight to the iron so as to shorten his sufferings. Then a square wooden frame was placed anglewise across his body, and iron weights put on it. The pain was terrible, but it seemed that he would live a long time. Therefore his friends stood upon it, and their weight and the fact that an angle of the frame pressed on his chest over his heart soon ended the scene. After ten minutes of unendurable torment he died.

Mr. Justice Stephen, indeed, queries whether the act of his friends in thus mercifully shortening his life was not itself murder. It may be that it was, but the idea occurred to no one then. At that time, and for years afterwards, a felon's friends were allowed to shorten his sufferings by clinging to his legs as he swung from the gallows.

After it was certain that Strangeways was really dead, his body was exposed to the public, and when morbid curiosity was sated, he was handed to his friends for burial.

Thus died a gifted if violent man. He was undoubtedly guilty. Even if he had seduced another to commit the act, that would not alter the quality of his crime, but would merely render two guilty instead of one. Nor was he entitled to choose his manner of dying. He had not allowed his victim any choice, nor had he committed any military offence. He was an ordinary murderer and not entitled to a soldier's death. But, all the same, he was put to death, not because he had done murder, but merely because, being charged with a capital felony, he had refused to plead. It is satisfactory to think that such a consequence is now, and has for many years, been recognised as barbarous and obsolete.





*Madeline Smith*



## MADELEINE SMITH

**E**ARLY in 1928 there died in America an old lady of over ninety, who for a few months in 1857 emerged from obscurity to undergo a trial for murder and then stepped back to the tedium of an everyday existence. She was a pretty, vivacious girl, the eldest of the five children of a Glasgow architect. Her parents had given her an education from which she profited, especially in music, for which she had a marked aptitude. Such a girl, living at home, under the guidance of parents who loved her and watched over her, would be, at first sight, the last person to suspect of a double life; the least likely to be accused of murder.

The victim, Pierre Emile L'Angelier, was a young man of thirty. Good-looking, self-confident and well-mannered, he was not the associate that parents of eligible daughters would choose for them; he was not merely a foreigner, but also a mere clerk in a seedsman's establishment, anxious to improve his status by a fortunate marriage. He had a story which would appeal to a romantic mind. His father was a Frenchman, who settled in Jersey after the Revolution of July, 1830, and had died young. Emile had been sent to Edinburgh, in 1842, to a firm of seedsmen, in whose employment he remained until 1847. Then he went to Paris and lived there for several years, serving in the National Guard through the Revolution of 1848. In 1851 he came back to Edinburgh with the intention of marrying a young lady of position whose affection he had gained, only to find that the lady, believing that he had departed for ever, and in any case not believing that he would ever be able to support a wife, was about to marry one of her own countrymen.

The lady's judgment was canny. L'Angelier had made no arrangements for his support and was reduced to destitution. But for a kindly tavern-keeper who allowed him bed and board, he might well have starved. Eventually, in January, 1851, he found employment at Dundee, exchanging this in the following September for the post of packing clerk

with Messrs. Huggins & Co., seedsmen, of Glasgow. An insinuating, pushing young man, he would certainly not find favour in the eyes of Mr. Smith, the architect.

He was active in seeking the friendship of women, with whom he was a favourite, but he had made friends only with very few of the social position at which he aimed when in 1855, in some way or another, Madeleine Smith crossed his path. He admired her and determined to win her. It was not long before he had found a youth who knew her, and effected an introduction in Sauchiehall Street. To do him justice, it was as his wife that he wanted her, and his efforts to win her affection made rapid progress.

Soon a friend told Mr. Smith, and Madeleine's mother took her to task, but though the girl made no secret of her desire to introduce L'Angelier to her family, she appeared to acquiesce. By the end of 1856, Madeleine seemed prepared to accept the addresses of the suitor favoured by her parents. He was an eligible merchant of Glasgow, named Minnoch, none the worse in their eyes because he was a number of years older than their daughter. On 28th January, 1857, he proposed and was accepted, and the family settled down complacently to receive congratulations and make preparations for the wedding, which was fixed for June.

It was therefore probably only a matter of news, at most of slight relief, for them to learn that L'Angelier had died on 23rd March, 1857. But Madeleine knew better. On the 26th, by some unexplained means, she learned that her letters had been found at L'Angelier's lodgings, and she took refuge in a useless flight. Her family missed her, and searched. Minnoch at last found her and brought her home. Even then they did not realise what was in store, but on 31st March, Madeleine was arrested and a statement taken from her. The officials knew and respected her father, and were troubled and anxious, but she bore the ordeal without flinching, the least embarrassed of them all.

L'Angelier's death was a peculiar one. He had twice previously been taken suddenly ill, as he said, after partaking of food given to him by someone. One of these occasions was in February and one early in March. They left him ill and weak, but he went away to recuperate, returned suddenly to keep an appointment, and was found outside his lodgings late on the night of 32nd March, terribly ill and in great suffering.

The doctor was not too despondent, but L'Angelier was convinced that he was in danger of death. He sent for a girl friend, but before she could see him he died. He had not said where he had been or how he had become so ill.

He was a stranger, and the last duties were undertaken by a fellow employee. On the 25th March this young man found a number of letters from Madeleine Smith. He communicated with the Procurator Fiscal, but the funeral took place as arranged on the 26th. It was thought advisable to examine the remains. The body was exhumed on the 31st, and at once a vast quantity of arsenic was found in it. There were no fewer than  $82\frac{1}{10}$  grains in the stomach—almost enough to kill a platoon.

Inquiries soon revealed that, unknown to her parents and friends, but with the connivance of a maidservant, Madeleine had been in constant communication with L'Angelier. Letters had passed. She had destroyed his, much as Edith Thompson had destroyed Bywaters', but, as in that case, the man had preserved the woman's letters. In this case, it is true, there were several letters of his, but, being found in his possession, it was doubtful whether they were drafts which were not used, or copies of letters which were sent. Eventually most were excluded because they were not proved to be copies of letters sent. The correspondence showed that by April, 1855, he had gained the girl's affection, but not assuredly. Twice in that year she wrote to discontinue the association, but he persisted. By the end of that year her letters had become ardent outpourings of affection, proving that he had visited her clandestinely. Before 1856 was half over, they made it plain that he had gained the extreme proof of her love and that she regarded him as her husband. Indeed, he might well have been her husband. The maidservant may have been present at a declaration which would have been sufficient by Scottish law, but whether that was so or not must remain uncertain.

Towards the end of 1856 it is plain that he was suspicious of Minnoch and taxed Madeleine with encouraging that suitor's advances. She repudiated the accusations with spirit and her letters remain as ardent as ever. Nevertheless, it seems certain that by November she had begun to reconsider the situation. On 28th January she had decided. Minnoch was accepted.

L'Angelier was not a man to be so easily dropped. He had

everything to gain and nothing to lose. In a draft or copy letter written as early as 19th July, 1855, when she had attempted to break with him, he had shown that he was capable of blackmail. "Think," he wrote, "what your father would say if I sent him your letters for a perusal. Do you think he could sanction your breaking your promises?" Would he now give up without a fight?

It became evident that he would not. In one letter she adjured him as a gentleman to keep her secret, but he would not loose his hold. She wrote letters of shame, agony and entreaty, but after two or three such letters she resumed in a strain affectionate, but no longer ardent. The last was posted on the 21st March, and there is a modest affectionate letter to Minnoch of the 16th. It was suggested that, having failed to secure immunity by her appeals, she had resumed her former style so as to lure L'Angelier to his doom. If he would not go out of her life, then he must be removed.

One cannot hang a person merely on letters which prove a love which has grown cold. There must be evidence of murder. It was soon discovered that Madeleine Smith was in possession of arsenic. It is important to bear the dates in mind. Three charges were made: first, attempted murder on the night of the 19th February, 1857; secondly, attempted murder on the night of the 22nd February, 1857; and thirdly, actual murder by administration on the night of the 22nd March, 1857, causing death on the following day.

The first information her friends received was from herself. On the morning of the 31st March she was talking to Minnoch. Of her volition, she mentioned a rumour that L'Angelier had been poisoned and added that she had arsenic, as she had learned at school that it was good for the complexion.

Inquiries soon revealed purchases of arsenic. It was, however, essential to show that she had arsenic at the right times and also an opportunity of administering it. From that point of view it was a mistake for the prosecution to have relied upon the first of the alleged attempts. Mrs. Jenkins, the landlady, fixed the date by reference to the second illness on 22nd February. The first, she said, was eight or ten days before, i.e., on the 12th to 14th, and not the 19th. He complained of intense pain in the bowels and vomiting. After that he was never the same and always said when asked how he felt: "I never feel well." The date changed; the

19th was fixed by a Miss Perry, who also said that the dead man was to meet Madeleine on that night, but she was not too certain about her dates. Thuau, L'Angelier's fellow-lodger, said that on this first occasion, according to L'Angelier, he was taken ill and vomited in Miss Smith's presence. It may be that this was an illness brought on by arsenic, but there was no evidence that the accused had any arsenic to administer, and very little, if any, evidence that she had an opportunity of administering it.

By the 21st February Madeleine did have arsenic. She went to Murdoch, the chemist who supplied her family. She bought arsenic, of the kind which is mixed with soot, did not pay for it, and had it put to her father's account. She told the shopman that the gardener at their country house wanted it for the rats—which was not true.

On the 22nd February L'Angelier was again ill. This time he was taken with vomiting at four in the morning. The doctor came and the patient was laid up some eight days. If the accused met L'Angelier and had desired to administer poison then, she undoubtedly had the substance. The evidence of a meeting was not conclusive. There was a letter which referred to a meeting, but, like so many letters from ladies, it was merely dated Wednesday, without any indication of the month or year, and the postmark did not enable one to say with certainty what the date of posting was. His landlady certainly said that he had announced his intention of staying in on the Sunday in question, but she could not recollect whether he went out or not. There was a statement of Miss Perry, who said that, in talking to her, L'Angelier said that these two illnesses followed upon his being given coffee on one occasion, and cocoa on another, by Madeleine Smith.

On the 6th March the Smith family went to the Bridge of Allan. That morning she had met Mary Jane Buchanan, a former schoolmate. The pair walked along Sauchiehall Street; when passing a chemist's shop, Madeleine asked her friend to go into it with her. There she purchased arsenic and signed the poison book. The purchase was made openly. She remained at Bridge of Allan, where Minnoch was and she was patently anxious that L'Angelier should not be, until March 17th, when she returned to Glasgow.

L'Angelier, on the other hand, had remained at Glasgow until the 10th March, then went to Edinburgh, from which



city he returned late on the 17th. He stayed in all day on the 18th, and next morning went to Edinburgh, then on to Bridge of Allan, and stayed there until the 22nd March, when he returned at night.

The second purchase of poison was on the 6th March, immediately before Madeleine left Glasgow. If meant for L'Angelier there was no chance of administering it before she returned. Having returned on the 17th, on the next day she made a third purchase of arsenic as openly as before, and on as false a pretext. Apparently she had written him to meet her at Glasgow on the 19th March, but he did not, because the letter did not reach him in time. The letter was not discovered, but the envelope was. On the 21st March she wrote a letter which was found in the dead man's coat. It read :

*Why, my beloved, did you not come to me? Oh, beloved, are you ill? Come to me, sweet one. I waited and waited for you, but you came not. I shall wait again to-morrow night, same hour and arrangement. Do come, sweet love, my own dear love of a sweetheart. Come, beloved, and clasp me to your heart. Come, and we shall be happy. A kiss, fond love. Adieu, with tender embraces, ever believe me to be your own ever dear, fond*

*Mini.*

Immediately L'Angelier received that letter he started for Glasgow, walking a considerable distance in apparent health and content. His landlady noticed the improvement. He made no secret of the reason for his return. It was a letter. Somewhere about nine o'clock in the evening he went out, and the last witness who saw him met him about half-past nine not far from Madeleine's house. It was a maidservant at the house of a friend on whom he called at that hour, only to find him out.

At two o'clock in the morning Mrs. Jenkins is roused by sounds at her front door. She goes down and finds L'Angelier in agony, speechless and burning with fever. She takes him in and he commences to vomit. She puts him to bed and sends post-haste for the doctor, who comes as soon as possible. To the patient he speaks comforting words, but the patient is not to be deceived. He knows that he is deadly ill. He asks to see Miss Perry, who hastens to him, but before she arrives he is dead. To no one has he confided where he has been or how he came to take the fatal dose.

That is almost the whole story. It must be added that in her statement Madeleine Smith admitted the purchase of arsenic and admitted that she lied as to her reasons, but because she did not want her real reason known. She had read that the Styrian peasants used arsenic to improve their wind and that arsenic was good for the complexion. What she did not explain was how she got the notion to dissolve it and dab it on her face and arms, since that was how she said she used it—a method from which the experts shrank. In the printed word the peasants had taken it internally. As for the 22nd March, she had not seen or heard from the dead man. What he did on that evening she had no notion.

The trial lasted nine days. It was held at Edinburgh before the Lord Justice Clerk and Lords Ivory and Handyside. Late in the afternoon of each day the bench was visited by other judges, who, on finishing their list, paused for a few moments to watch this moving trial. The jury was composed of fifteen men, the number for Scotland, where the foreman is called the Chancellor of the Jury and the prisoner the pannel.

The most celebrated of the Scots Bar were briefed. The Lord Advocate (John Moncrieff) led Maitland and Mackenzie for the prosecution. The Dean of Faculty (Inglis) led Young and Alexander Moncrieff for the defence. The first five of these six all subsequently attained judicial rank. Alexander Moncrieff died at an early age after a career that proved that he, too, was destined, if he had lived, for high judicial office.

As is the custom in Scotland, the proceedings after the plea and empanelling the jury commenced with the evidence; for six days the witnesses, first for the prosecution, and then for the defence, went into the witness-box, were examined, cross-examined and re-examined. The greatest medico-legal experts of the day were opposed and the greatest advocates of Scotland exerted all their powers. But throughout this ordeal the centre of interest was the quiet, demure, pretty girl who sat in the dock obviously interested, but not concerned. On the seventh day the Lord Advocate spoke for the Crown, an effort which marshalled the evidence against the prisoner with consummate skill but absolute fairness. On the evening of that day Madeleine Smith was asked what she thought of it. She replied: "When I have heard the Dean of Faculty I will tell you. I never like to give an opinion till I have heard both sides of the question." On the eighth day she

was perhaps fully convinced, when the four orations of her advocate ended. It was a speech worthy of the profession and of the occasion. Then came the summing-up, which was not concluded on that day. Apparently the prisoner was disappointed. She called the Lord Justice Clerk "a tedious old man." On the ninth day the end came. The jury retired for half an hour and then gave their verdict. It was a majority verdict, as is allowed in Scotland. On each count, the voting was 13 to 2—the same two who were for guilty on each charge. On the first count she was acquitted; on the second and third the verdict was "Not Proven." Madeleine Smith sighed heavily and then smiled. Wild cheering arose in the Court and spread to the thousands existing outside. The Lord Justice Clerk expressed his concurrence in the verdict, and the prisoner was discharged, free, but not absolved.

That night she left to join her family and to commence the second part of her life, which has only just terminated.

What is the truth? Accident seems impossible. Suicide is a possibility. L'Angelier's was a mercurial temperament and he often had fits of deep depression. But nothing that he had said or done would indicate that he ever contemplated self-murder. If murder, then, who had a motive? Throughout the case there was no evidence, not even a suggestion, that anyone but Madeleine Smith had any motive which would cause them to kill this young man. So far as she is concerned, it is easy to suggest a motive. She had committed herself to L'Angelier and was engaged to another man. The rejected lover would not give her up. She was in danger of exposure—either by an interview or by production of her letters—and if she were exposed, then her engagement would be broken off and she would be for ever disgraced. It is certain that she would be in grave risk of being cast off by her family, to whom her conduct would be an almost unforgivable sin.

If he died, that danger would be removed. But would it? Her letters were in his keeping. While he was alive, he would only use them for one purpose, which indeed she dreaded. But after his death, then they would fall into the hands of strangers who would have no cause to keep them secret. Indeed, Stevenson, who found them, deemed it his duty to send them to the authorities, and his action made a prosecution and exposure certain. Still, she was young and inexperienced. We do not know how her mind worked or whether she was a

person who would sit down and coolly consider all the alternatives and their consequences. Even persons of experience act impulsively in a crisis. Yet she is entitled to the doubt whether she would deliberately do an act which might, and did, bring about the exposure she dreaded, and also to the doubt whether, faced with the destruction of his hopes, L'Angelier might not have decided to end his existence.

Looking at the evidence dispassionately, it seems impossible to disagree with the acquittal on the first count. There was only proof that the man had been taken ill suddenly. There was no evidence that they met: no evidence that she had poison if they had met, or that the illness was caused by poison. One might go further and say that the same verdict should have been given on the second charge. It is true that she then had arsenic, but there was no evidence that they met, and no real proof that the second attack was due to poisoning. And as to the third and most serious charge? The evidence was that she asked him to come and he went to keep the appointment. She had poison. He was poisoned by that kind of poison. Did they meet, and did she administer it? The question is one that can only be answered by those who heard the evidence and saw the witnesses. The jury were not satisfied, and we cannot now say that they were wrong.

We are told that happier days were in store for her. She found contentment in a quiet married life, and after long years she at last ended a life which, but for a brief period, was as happy and conventional as that of any other woman of her station in life.



*The Duchess of Kingston*



## THE DUCHESS OF KINGSTON

THE trial of Elizabeth Chudleigh, who was either Dowager Duchess of Kingston or Countess of Bristol, was more than a Society *cause célèbre*. Here was a lady of gentle birth, celebrated for her wit and beauty, who for years had lived in Society as Maid-of-Honour to the Princess of Wales until her marriage, at a mature age, with the Duke of Kingston—one of all others it would have seemed above suspicion; yet, nevertheless, it was alleged that at an early age she had contracted a secret marriage, had become a mother, and was actually a wife when she married the Duke. It is a mystery how she could have kept the marriage a secret, still more inexplicable that she could have for some time cohabited with her husband and given birth to a child while holding an office which she would vacate immediately upon marriage and the conditions of which one would have thought certainly ensured that all her movements would have been well known to very many people under no obligation to keep such an affair secret. Indeed, in spite of proceedings in the Ecclesiastical Courts, it is probable that she would never have been exposed but for her money disputes with the disappointed son-in-law of the Duke.

She was born in 1726, the daughter of Colonel Chudleigh, who was living at Chelsea Hospital. The Chudleighs were a Devonshire county family of some position. One of them, Sir John Chudleigh, a youth of eighteen, was slain at Oxford during the Civil War, refusing thrice-offered quarter. Her uncle, Sir George Chudleigh, held extensive estates in Devonshire. While she was yet young, her father died, but she was carefully educated with a view to occupying a place in Society. When only sixteen, her beauty and witty conversation attracted admiration, and by the favour of Pulteney (afterwards Earl of Bath) she was in 1743 appointed Maid-of-Honour to the Princess of Wales.

It is said that the Duke of Hamilton was attracted and that she received his attentions with favour; but an aunt of



hers, Mrs. Hanmer, had formed other designs, and took steps, even going so far as to suppress his letters, to prevent the liking developing into a more serious feeling.

However that may be, in the year 1744 the lady, while on a visit to a cousin named Merrill, who lived in Hampshire, met at Winchester races Augustus John Hervey. He was about her age, a younger son of the Earl of Bristol, and a junior lieutenant on board one of the ships in the squadron lying at Portsmouth awaiting orders to sail to the West Indies.

Hervey succumbed at once, and constantly visited the Merrills; and soon a marriage was arranged, but it was to be kept secret. Hervey had only his pay and an allowance from his father. Elizabeth would forfeit, on a disclosed marriage, her position as Maid-of-Honour.

Laniston, where Mr. Merrill lived, was one of those parishes which had much dwindled in consequence. The only house was Merrill's, and the church was at the end of the garden. It had a parson, but no services were held there, the family using the church at Sparshot, near by. As Lord Hardwicke's Marriage Act had not been passed, the parties could choose their hour. Mr. Amis, the clergyman, was requested to be at the church at eleven at night on 4th August, 1744. After dinner, the ladies went for a stroll in the garden, Mrs. Hanmer, Elizabeth Chudleigh and Ann, Mrs. Hanmer's maid. Not immediately, but as if independently, Mr. Merrill, Mr. Hervey, and a friend named Mountenay also went out for a stroll. Mountenay had a wax taper in his hat. They all happened to meet at the church. The parson was there. The lady was willing. So, by the light of Mountenay's taper, the boy and girl were wedded, and as soon as might be, bedded. After a honeymoon of four days, Hervey was recalled to his ship and eventually sailed for the West Indies. Elizabeth Chudleigh, concealing her change of status and name, resumed her duties by the Princess.

It is not easy to account for the wedding, except on the hypothesis (not very intelligible) that it was designedly brought about by the bride's relatives. The spouses were under age, the boy's means were not such as to enable him to support a wife, yet if his parents were made aware of what had been done, without the knowledge, approval, or presence of any of his relatives, he might lose his allowance. She, on the other hand, could not have avowed her marriage and retained her office. Yet if it be true that the lady was the

with favour to the Duke of Hamilton, and only consented to this foolish match by her aunt's persuasion because she was piqued at not hearing from the Duke, unaware that his letters were being intercepted, then the conduct of the witnesses is inexplicable. But they were present at a secret midnight marriage and did not even procure the marriage being entered or the "lines" being written. The Maid-of-Honour might easily have found herself hopelessly compromised without the usual means which wives then had of establishing their status. It may be that the two, in a sudden mad passion, overpersuaded their elders, who perhaps thought that, if repentance followed and no issue, the absence of proof of marriage might be an advantage.

A curious feature is that the six other maids at Lanistoun were said, and actually appeared, to have remained in ignorance of anything unusual, though the two children occupied the same room for several nights.

Hervey was with his squadron until October, 1746, when he landed at Dover and at once went to rejoin his wife at her house in Conduit Street. Though he sailed again in November, this time for the Mediterranean, his living with his wife then and after his return in January, 1747, seems to have been kept a secret. He remained with her until May of that year, but differences soon developed into disputes, and they parted in anger, never to come together again. But, what is still more surprising, in the same year she gave birth to a boy, who lived for some months. He was born in Chelsea, and the fact of his birth, as also of his mother's marriage, did not leak out. The Maid-of-Honour still attended on her mistress.

Twelve years passed by. The Hon. Elizabeth Chudleigh continued to live as a spinster. She had dealings, purchases and sales, and made contracts, which a married woman could not validly make in those days, though a spinster could. But in 1759 the hope of a position as Hervey's wife began to have attractive features. The then Earl of Bristol fell ill and was like to die. If he did, then the penniless lieutenant of 1744 would be the wealthy Earl of 1759. But if his anger was not abated and he repudiated her claim, what had she to show? In writing, nothing.

In that year Mrs. Amis, who was tending her bedridden husband during the last few weeks of his life, received a call from a lady who proved to be Elizabeth Chudleigh. She was sitting at the "Blue Bear," opposite the Amis' house at

Winchester, and wanted to see Mr. Amis. She was allowed to go to his bedside. She requested a register of her marriage. Mr. Merrill also came to the house, bringing with him a sheet of paper, blank, but with a revenue stamp upon it. Mr. Amis doubted, and Mr. Spearing, a local attorney, was brought in to advise. He was sure that a register book was needed, so he brought one, and then and there Mr. Amis entered in the book the burial of Mr. Merrill's mother on 22nd August, 1744, and the marriage of 4th August, 1744.

During the intervals of this episode the ladies had been conversing, and Mrs. Amis received the other's confidences. The first was that it would mean £100,000 to her, it being satisfactory proof of the marriage; then that the union had been blessed by the birth of a boy, but he died. She had borrowed £100 from her aunt, Mrs. Hanmer, for the baby clothes.

When the entries were completed, the book was sealed in a package and handed to Mrs. Amis, to keep until her husband's death and then to give to Mr. Merrill. Though the Rev. S. Kenchen succeeded to his cure of souls, the book remained in Mr. Merrill's hands. A church, serving one household, does not make many demands on a register, so when, in 1764, Mrs. Hanmer died and was buried in the churchyard, Kenchen found no register. Merrill, however, produced this book, and a third entry was made. In 1767 Merrill, too, died, and was buried there. The book, with the four entries, was thenceforth retained by the clergyman.

Though so much earnestness had been displayed in 1759 to get this written evidence, no use was made of it. The reason was that the Earl of Bristol recovered and the hopes of succession again grew dim. However, before ten years had passed, this hope had become a certainty; Augustus John Hervey was Earl of Bristol. Now was the time to produce the evidence so carefully brought into existence. But no attempt was made to reveal the existence of a Countess. Elizabeth Chudleigh no longer aspired to that coronet. There was another of a more exalted pattern which was within her reach. Negotiations opened for a divorce. The Earl began. His message invited her to supply the necessary evidence. She in her turn refused in emphatic, if coarse, English. It did not suit her purpose at her age—for she was now forty-three—to expose herself as an adulteress, and then, laid bare to the scorn or raillery of her circle, wait the weary months

while the action of criminal conversation against the man selected as her paramour dragged on until the bill for divorce went through Parliament. This course offered her no advantages and no attractions.

She was about to retire on a pension after twenty-five years' service. That she would lose. If the Duke of Kingston were made defendant, then she would ensure him trouble and expense. If someone else were named, then the Duke might prefer a bride less damaged in the public eye. She wanted, as people of means and position always do, a shorter way which would give her all the advantages of a divorce with none of the exposure or delay. She took advice. What she said to her lawyers we do not know, but if it was what appeared in the pleading in the suit they advised her to bring, then she did not tell them the truth. But the advice was ingenious and seemed sound. If she were to bring a suit in the Ecclesiastical Court against the Earl of Bristol for jactitation of marriage, and he fought it and lost, then he would be ordered never to assert that there was such a marriage, and she would be free.

It may be asked: what good would that do her? She was married, and surely a collusive suit of that kind would not unmarry them. But the basis of the scheme was this: An Ecclesiastical sentence in matters matrimonial was binding upon all persons and all courts while it remained in force and unreversed. But the only parties who could upset such a decree were the two immediately concerned. It was not, apparently, a case for a nullity decree. Nevertheless, in a jactitation suit, the Court would inquire into the existence of the alleged marriage, and a sentence in her favour would in effect be an adjudication that she never had been married.

In this way she would gain her freedom, without jeopardising her pension or her title to property acquired during the twenty-four years since her marriage. It must be remembered that in those days there was no divorce in the modern sense, except by private Act of Parliament, and that the Ecclesiastical Courts alone had jurisdiction in matters matrimonial. In August, 1768, she entered a caveat against her husband's commencing any proceedings in the Consistory Court without notice to her. That saved her from any action on his part. On 9th November, 1768, she instituted her suit and a decree in her favour was pronounced on 10th February, 1769.

At last it seemed that Elizabeth Chudleigh had vindicated herself against the suggestion that for years she had been

living a lie. She at once married the Duke of Kingston on 8th March, 1769, having first sought the opinion of Dr. Collier, who advised that no power on earth could upset the decree and that her marriage was indisputably lawful. Indeed, he was present at the ceremony.

The Duke was in bad health, and the two spent most of the five years that were left of his life on the Continent. But she had kept in touch with Mrs. Amis. She had found her a husband. Phillips, the Duke's agent, wanted a wife, and Mrs. Amis had consoled herself with him. Soon after the Duke's marriage Mrs. Phillips called on the Duchess, and, in course of conversation, the latter said: "Wasn't it good-natured of the Duke to marry an old maid?" and the two ladies exchanged a meaning glance.

The Duke made two wills, the second more favourable to the Duchess than the former. So far as he could, he gave her a life estate in all that he had. It is said that on his death-bed she tried to get him to execute a third will, even more in her favour, but when he died the will that existed proved a bitter disappointment to his relatives. He had an only daughter, married to Evelyn Meadows, and their expectations were dashed when they found that the remainder was limited to their three younger children. They and their eldest son got nothing.

The Duchess went abroad, visiting many countries. Eventually she went to Rome. Meanwhile, in England, the Lawyers were busy. Meadows instituted proceedings in Chancery in which he charged his stepmother-in-law with undue influence over her husband. As the litigation went on, he came across Mrs. Hammer's maid, now a widow, Ann Cradock, and soon became aware of the marriage and the register. He could now take decisive steps. On 9th January, 1775, he presented to the Grand Jury of Middlesex a bill charging her with bigamy, and in due course the indictment was found.

There was one objection. The accused was out of reach. Extradition was unknown, so that while away she could not be tried. But to carry on the other litigation her presence was imperative. He adopted other means to annoy her. Though she possessed ample funds, her banker at Rome was induced to refuse her payment. He adopted the easy plan of never being in when she called, but that device cannot avail a banker long. She made it her business to see him, and, on finding



THERESA YELVERTON  
(From a sketch made in Court )



THE FOUR COURTS, DUBLIN  
(After the painting by W. H. Bartlett.)

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revolver, forced him to hand over the money which he had no right to withhold from her. She at once hurried to Calais, but there stayed. She was in ill-health and had reflected upon her situation. Was it clear that she could get bail? What was the penalty? Certainly women convicted of bigamy had been put to death.

Therefore, she refused to venture within reach of the law until she had an authoritative pronouncement on these points. This was forthcoming, it is said, from Lord Mansfield, the Lord Chief Justice. However that may be, it is certain that the Court of King's Bench had, on 18th May, 1775, called the indictment into that Court for trial there. But during the delay it occurred to someone that, guilty or innocent, Elizabeth Chudleigh was a peeress, as the widow of the Duke of Kingston or as the wife of the Earl of Bristol, and accordingly the indictment was, on 11th November, 1775, called up into the House of Lords, the only Court which could try her.

Having been duly fortified by advice, the accused then crossed to Dover. She surrendered herself and was admitted to bail by Lord Mansfield. Eventually a commission was issued on 15th April, 1776, to Earl Bathurst, as Lord High Steward, to preside at the trial, and on that day the proceedings commenced.

The Lords assembled in their own House, and thence, preceded by their attendants and by all the Common Law judges, who had been summoned to attend, they proceeded two by two in reverse order of precedence to Westminster Hall. There the lawyers were assembled. For the Crown appeared the Attorney-General, the Solicitor-General, and three other barristers and civilians. Mr. Wallace led Mr. Mansfield and three others for the defence.

When the Lords were seated, the accused lady was introduced. She fell on her knees and was bidden to rise. Then the Lord High Steward informed her that the death penalty had been abolished. She replied in terms of deep respect, and the indictment was read. She pleaded not guilty, and the numerous audience settled down for the Attorney's opening speech. But much was to happen before he could begin. Mr. Wallace at once made an application, or objection. To prove their case, the prosecution must prove the marriage of 4th August, 1744. But there was a decree of the only competent Court that no such marriage existed. That decree was a judgment *in rem*, binding upon all men and all Courts. The



prosecution were stopped from calling evidence to contradict such a judgment, and counsel asked the Lords so to rule. There followed a perfect orgy of argument. One after another five Counsel rose and put the case for the accused upon this point. One after another five Counsel argued the contrary, and three were heard in reply.

The Lords, before deciding, called upon the judges to advise them, and their opinion is still cited as the leading authority on the two points upon which they pronounced. (Duchess of Kingston's Case, 1776, 1 Leach 146.) They made these rulings :

(1) That a sentence in a suit of jactitation of marriage was not such a judgment as bound persons who were not parties to the suit. It was therefore not a judgment *in rem*, and the Duchess's adviser, Dr. Collier, had mistaken the law when he said that the marriage, following the sentence in that suit, could not be challenged.

(2) That even if it were such a judgment as bound the whole world, nevertheless, fraud vitiates all things, and the prosecution were at liberty to call evidence to prove that the sentence was obtained by fraud.

The Lords acted upon the Judge's rulings and called upon the Attorney-General to open. His speech was studiously moderate and courteous and consisted of an outline of the facts.

The first witness was Ann Cradock. Before she was asked any question, Mr. Wallace requested the Lords to inquire of her whether she had received or been promised any benefit or reward. She denied it, and then gave her evidence. She fixed the year as 1744, because she "was certain that it was the same year in which the *Victory* was at Portsmouth," and the month as August, both because of Maunhill Fair and of the fact that the greengages in the garden were ripe and the youthful pair were both fond of them. Her cross-examination was directed to any reward she might have had or expected, but she denied the suggestion. Indeed, she added that the accused had offered her an annuity to retire to the North of England, and she went, but found it lonely among strangers, far from her home and relations, and so returned.

Dr. Hawkins, the next witness, raised the question whether he could give evidence. His knowledge was obtained professionally. Lord Mansfield told him that he had no privilege.

It was his duty not to proffer information to others, but he could not refuse to assist the administration of justice. He "believed" he was present when the child was born; certainly he had attended it. The accused had told him that she was married to Hervey, and during the jactitation suit had complained to him that she had not realised that she must take a positive oath that there was no marriage. The ceremony as done, so she said, was such a scrambling, shabby business, and so much incomplete, that she would have been fully as unwilling to have taken a positive oath that she was married as that she was not married. His final observation was that the accused certainly believed that she could marry after the decree.

He was followed by the Hon. Sophia Charlotte Fettiplace, another Maid-of-Honour, who also tried to escape giving evidence. All she could prove was that the accused had told her that she was married to Hervey in Hants, in a summer-house in a garden. Lord Barrington, who followed her, raised the objection that to give evidence he would have to break his word of honour. The legal peers were not impressed, but the lay peers obviously sympathised. During the discussion, the prisoner said that she released him from his word. She desired all the witnesses to say what they knew. She had come from Rome at the risk of her life to surrender to the Court in order to meet the charge. Lord Barrington still objected, and the discussion went on even when the Solicitor-General said that he withdrew the witness. Eventually he was ordered to state what he knew, and he then said that he had not spoken to the accused for over twenty years. She had told him that there was a matrimonial engagement of some kind, but whether it amounted to a legal marriage or not, he was not qualified to judge. He was allowed to leave the matter in that position.

Judith Phillips, widow of Mr. Amis, the parson, gave much more damaging evidence. She told about the register being obtained in 1759 and of her conversations with the accused. Her cross-examination was directed to two main points: first, that her second husband had been dismissed by the Duke, which she denied; and, secondly, that she was being maintained and was in touch with the prosecutor, which she also denied. So far as may be judged from the report, her denials on the second point were untrue, but her main evidence was not cross-examined upon.

The remaining witnesses were not important. The register book was produced and the handwriting proved. The

marriage with the Duke of Richmond was proved. Then the solicitor said that Mr. Spearing, the Attorney, "though Mayor of Winchester, is now found to be amusing himself somewhere or other beyond seas. God knows where"—a plain hint that the defence had made it worth his while to absent himself.

Then the accused lady addressed the Court, protesting her innocence. It was a dignified speech, but the legal matter in it makes it plain that she was not the author. Why, she asked, if she were guilty, was she left unmolested during the Duke's life? Since his death she had been the victim of insulting charges in Chancery suits, and of an infamous prosecution, though in a dangerous state of health; her credit had been stopped, and she would thereby have been prevented from returning to meet the charge. She had instituted the jactitation suit because Lord Bristol's reports about her had unsettled her title to her property and had endangered her pension from the Princess of Wales. At the end she asked the Lords to send to examine Dr. Collier, her advocate in the Ecclesiastical proceedings, as he was too ill to come to give evidence. The application was necessarily refused, as there was no precedent for taking evidence in a criminal trial except *viva voce* in open Court.

Then came the witnesses for the defence. First, Mr. Berkeley, Lord Bristol's attorney, raised an objection on the ground of professional privilege. It was overruled, and he then said that in 1768 the Earl wished to obtain a divorce and the witness saw Ann Cradock, who said that she was old and infirm and could remember nothing of the matter. Ann Pritchard was now called to prove that, when discussing the Chancery proceedings, Ann Cradock told her that, though in the church, she had not heard the marriage ceremony. Finally, a witness proved that Dr. Collier had advised that the marriage with the Duke could safely take place.

As the Attorney-General admitted that, before her marriage with the Duke, the accused had acted in many transactions as a single woman, no further evidence was called.

The Solicitor-General was called upon to speak in reply. He was almost contemptuous, for his speech amounted to little more than an assertion that the defence had made out no answer to the charge, and therefore he need not deal with the facts in detail.

As is usual in peerage cases, there was no summing-up.

and the peers proceeded to vote. One by one their Lordships rose and pronounced the prisoner guilty. There was only one variation from the time-honoured formula "Guilty upon my honour." The Duke of Newcastle said : "Guilty erroneously, but not intentionally, upon my honour."

One would then have expected the sentence, but a further point was raised. The accused claimed the privilege of peerage. The Attorney-General, asked to deal with the point, professed that he had not expected to be called upon, but nevertheless he began a long and learned argument, which could not have been delivered unless someone on his side had anticipated that the point would be raised.

The point was this. By statute, peers enjoyed immunity from punishment from clergyable offences. Where a man could plead benefit of clergy, a peer was entitled to be discharged, but without reading or branding or imprisonment. A woman could not claim benefit of clergy, and for her sex the judges had invented the presumption of marital coercion (a fiction abolished in 1925). Could a peeress claim this privilege of a peer? After long argument the judges were asked to give their opinion. They ruled that a peeress did enjoy this privilege—the third point upon which this case is an authority, but it has now ceased to have any practical application. The Lords accepted the ruling, so the accused, found guilty after a five day's trial, escaped punishment. The Lord High Steward, in discharging her, warned her that the privilege could only be claimed once for this offence. She fainted and was carried out. Then he called for the White Staff which the Gentleman Usher of the Black Rod handed to him. He rose and, breaking the staff, declared his commission ended, and the Lords returned in solemn procession to their own House.

Was she guilty? It seems quite certain that she was. She had contracted a foolish marriage and desired to escape from its bonds. Learning that a decree would be binding, it seems certain that she was at least a consenting party to a collusive and fraudulent action whereby she endeavoured, by relying upon a technicality of the law, to gain liberty to contract a second marriage while the former remained in existence. She was not the kind of woman who would be a dupe, but her ingenuity, or that of her advisers, was too cunning and she suffered exposure in consequence. She lived, naturally enough, abroad for the remainder of her days.

Immediately after the trial, she heard that her adversary was applying for a writ *ne exeat regno*. He was no match for her in manœuvring. The town soon knew that she was issuing invitations to dinner to her sympathisers, but she did not stay to receive them. The invitations covered her departure for Dover, whence she crossed to France and made her way to Rome. There she found that a friar, whom she had left in charge, had stolen her plate and seduced her maid.

After various journeys, including a venture at St. Petersburg in brandy distilling, she settled in France. Once she purchased a large house at Montmartre, only to find that it was so dilapidated as to be useless, and she was plunged into litigation. After that she bought a magnificent estate near Paris, called St. Assize. The house was large enough to be made a royal palace, far beyond her needs, but she made use of the grounds to trap game, which she used to sell in Paris. Her penchant for litigation shortened her days. In 1796 she was informed that she had lost a lawsuit. She was so annoyed that she burst a blood-vessel, and a few days later, on 26th August, 1796, she expired, at the age of seventy. She had had a long and, on the whole, a successful life. While Society and position appealed to her, she held an important post with the first lady in the land. If she loved secret romance, she had for twenty-five years lived hugging to her bosom a secret which would have intrigued her friends and enemies. When position and means appealed to her, she contracted a wedding which improved her status and thereby acquired means to indulge her fancies during the rest of her life. A masterful woman of intellect, wit and beauty, she overrated the importance of getting her own way. It led to her improvident first marriage, to the chicanery of the devices which enabled her to marry again, and eventually contributed to her death. At least she obtained her desires. Even when exposed she escaped the grosser form of punishment. She merely incurred notoriety and loss of respect. Whether the game is worth such results is a question which women answer according to their temperament, but there is every reason to believe that, if Elizabeth Chudleigh had been more prudent, she would have merited as great a prominence as she enjoyed during the days she was held in honour; and she would not have ended her days in exile, a lonely, quarrelsome old woman.

# *The Murder of Dr. Parkman*



## THE MURDER OF DR. PARKMAN

ONE day Mr. Benjamin Butler, in his time a very well-known advocate in the States, was cross-examining a witness in a manner which earned him a judicial rebuke. "Remember," said the Judge, "that the witness is a Harvard Professor." "Yes, your Honour, I know," retorted Butler. "We hanged one of them the other day."

The Professor who was hanged was John White Webster, Professor of Chemistry and Mineralogy at Harvard University and of Chemistry at the Boston Medical School. He was, in 1849, about sixty years of age, living on most affectionate terms with his wife and three unmarried daughters, of a social disposition, known to a wide circle of friends and liked by everybody, except, it would seem, by one Littlefield, the caretaker at the Medical School. Though a Professor and M.A., M.D. of Harvard, he was not regarded as a really learned man, and his lectures bored the students. Nor was he a prudent man. His income from his chairs was small, \$1200 from Harvard and fees at the Medical School, and could not have exceeded £400 a year. On this income he entertained largely, and it is not surprising to find that in 1842, having run through his patrimony, he borrowed money.

The lender was a lifelong friend, Dr. Parkman. He had retired from practice and spent his time watching his investments. Nearly six feet high, but seeming much taller by reason of the spareness of his build, he was one of the best-known characters of Boston as he scurried through the streets, chin thrust forward, right arm behind him with the hand clasping his left elbow. The common folk called him "Chin" behind his back.

Like many Scots, he was generous in his own way. He had given the land on which the Medical School was built, and the Professorship of Anatomy held by Oliver Wendell Holmes was named after him. He was devoted to his wife and invalid daughters. The family came from Aberdeen, but had settled



in Boston, where his brother held a cure of souls. The celebrated historian was a nephew of Dr. Parkman.

When, therefore, in 1842, Webster applied to his old friend for the trifling loan of \$400, the money was at once forthcoming. The punctilious and exacting Scot did, it is true, obtain a note of hand and require interest, but, though the years passed, he was content to regard the loan as an investment and was satisfied with the interest he received. The rate was 6 per cent, quite moderate, since he could at that time have got more on mortgage securities. In 1847 Webster wanted more and Dr. Parkman procured it for him. A small group joined in advancing \$2432, payable in four yearly instalments with interest at 6 per cent. This time he took as security a charge on all the debtor's personal property, and this was duly registered. But Webster was still hard up in 1848. He went to another old friend, Parkman's brother-in-law, and borrowed \$1200, depositing with his creditor his cabinet of minerals as security. This cabinet was part of Parkman's security, and Webster's action was not only dishonest, but foolish in the extreme. Of course, it soon came to Dr. Parkman's knowledge and turned him into a bitter and relentless creditor. Thereafter he pursued the unfortunate man, demanding money which he was quite unable to pay and adding to his embarrassments by attempts to divert the students' fees payable to the Professor. It is said that he even haunted the classes, sitting in the middle of the front row and glaring at his debtor. It was clear that this persecution would cease only on payment, and payment was quite out of the Professor's power.

It is in circumstances such as these that the thoughts of weak, conceited men turn to murder. They are weak enough to dally with the idea, and conceited enough to think that they can commit a murder with impunity. Professor Webster, with all his amiable qualities, was weak and conceited, and in November, 1849, he entered upon the scheme which cost both creditor and debtor their lives.

The Professor had quarters at the Medical School set apart for his own use. They consisted of a laboratory, a private room and a lavatory. Under the lavatory was a vault separated by a wall from the room where the objects for dissection were kept. In this vault the sea penetrated, but in such a way that solid substances could not enter from the sea or.

be washed out into the water. The whole school was under the charge of a caretaker, Littlefield, who lived on the premises.

During term, the Professor lectured from Tuesdays to Fridays, but not on Saturdays, Sundays and Mondays. In the week commencing Sunday, 25th November, 1849, he was due to lecture only on the Tuesday, since Thanksgiving fell on the Thursday and the lectures were suspended after Tuesday for the rest of the week. It was not his custom to attend the College on any Saturday or Sunday.

The events which I am about to relate began on Monday, 19th November, 1849. On that afternoon Parkman called at the Medical School and the conversation was loud enough to be heard by Littlefield. He began: "Dr. Webster, are you ready for me to-night?" and received the reply: "No, I am not ready to-night, Doctor." He then revived the grievance about the cabinet and eventually the two men parted, with a promise to meet on the morrow. So far as is known they did not meet until Friday, the doctor pursuing and the Professor evading pursuit. But early on the Friday a man, admitted to be Professor Webster, called on Dr. Parkman and appointed a meeting at 1.30 that day. Towards this time Dr. Parkman was seen striding in the direction of the Medical School. He was not seen again alive.

That night the family became anxious and a search was instituted. From time to time rewards were offered. The news was widespread by the Saturday, and during the next week formed the chief topic of conversation in the neighbourhood. It was on the Sunday that Professor Webster first told the missing man's brother about the appointment. Dr. Parkman, he said, had called and received \$483.64 for principal and interest. He was dashing off when he was called back to cancel the note for \$400. He seized a pen, struck through the signature, and as he again ran down the stairs, called out that he would cancel the charge next day at East Cambridge.

Meanwhile the Professor had changed his habits. He was at the Medical School on Saturday and Sunday, where he had never been before, and even after the Tuesday, when lectures were suspended, he was every day busy in his quarters at the School. But they were kept locked and Littlefield was not allowed in. It was the latter's duty to light the fires, but he could not do it. Nevertheless, daily he noticed that the heat in the laboratory furnace was so great as to penetrate the wall,

The Professor, too, began to make friendly inquiries about the caretaker, and for the first time gave him a turkey for his Thanksgiving dinner.

Littlefield was suspicious, and sought for means to enter the forbidden rooms. At last he decided to break through the wall into the vault. His first attempt failed, but he renewed it on the Friday, just a week after the disappearance. During that week Professor Webster had done several things not expected of him. He had bought fish-hooks and twine and with it made a grapple. He had talked with all and sundry, and it was noticeable that he tried to make people say that Dr. Parkman had been seen after the interview. He told people of mysterious occurrences, such as a bricklayer paying a five-cent toll with a \$20 bill. Someone wrote illiterate letters to the police. At the trial experts said that Webster wrote them. They were certainly curious productions for such a man. Here is a specimen :

*"Dr. Parkman was took on Bord the ship herculun and this is al I dare to sa as I shall be kild. Est Cambige one of the men gave me his watch but I was feared to keep it and throwd it in the water rigt side the road to the Cambridge to Bost."*

There had been a search at the School on the Monday, but it was merely to satisfy the public. The Professor's rooms were visited and afterwards it was remembered that, when they went to his lavatory, he called their attention to something else and it was left unvisited.

On Friday, 30th November, Littlefield broke through into the vault under the lavatory, and by the light of a candle saw a pelvis and parts of legs. He at once told of his discovery, and a thorough search was decided on. Webster was at Harvard and he was sent for. The messengers, by a ruse, got him into a cab and drove him to the gaol, where he was informed of the discovery. The news dazed him. He gasped out the significant question, "Have they found the whole of the body?" and moaned about the shock to his family. He certainly made an attempt on his life, but the poison did not kill him. He became terribly ill. In that condition he was taken to be present at the search.

On the Monday the searchers had seen a tea-chest filled with tan bark. Now they found concealed in it a man's left

leg and thorax from which the breast-bone had been dissected. There were pieces of flesh. In the furnace were calcined bones and obviously the remains of false teeth and a shirt-button. In the vault were a pair of his trousers and some towels, almost new. The remains in the tea-chest were bound with twine, like that used for the grapple which was also found. But no clothes or personal belongings of the missing man.

It was one thing to be certain that the mystery was solved, but another to demonstrate that the solution was the real one. Dr. Parkman had disappeared, but were these his remains? A medical school has many subjects for dissection. A group of experts was set to work, and their conclusions are still cited in works on medical jurisprudence. They were able to show that the remains were all part of one body, and not several, but that not the whole body was there. In fact, the parts most likely to lead to identification were missing, including the head. They were also able to satisfy themselves that the body was not one used for anatomy; there was no trace of the preservatives which are always used for such subjects. Further, they were of opinion that deceased was a man between fifty and sixty years of age, probably quite sixty, and in life had the same height and build as the missing man. The dismembering had been done for no scientific or medical reason, but was nevertheless the work of someone acquainted with anatomy. Parts of the flesh discovered had been treated with potash, which would tend to destroy it.

The remains from the furnace added further significant data. The calcined bones were not all so burned as to prevent them being named. Some came from the head, others from the leg and arm, and the other remains lacked the head, one leg and one arm. There was also a shirt-button, showing that a garment had been burned, and, most important of all, a human tooth and some blocks of artificial mineral teeth, stained pink, a fact which indicated that they had been subjected to very great heat in the presence of gold. An examination for metals yielded a certain amount of gold, which might be expected if a head containing false teeth had been burned.

The dentist who attended Dr. Parkman was called in. He was a close friend of both men, and at the trial gave his evidence with manifest reluctance and great emotion. He had made the teeth for Dr. Parkman in 1846 and had kept

the moulds and casts. There would be no room for doubt. Dr. Parkman had a most abnormal peculiarity in his lower jaw, which had required a most unusual form of block. Moreover, after he had been fitted, he had complained that there was no room for his tongue, and the blocks had been specially filed. Those taken from the furnace bore the marks of the filing, and but for that, corresponded exactly with the moulds. He said, too, that the false teeth must have been in the patient's head when placed in the furnace, because otherwise they would have exploded in coming into immediate contact with the fierce heat.

The result of this examination was such that Professor Webster and his advisers admitted that there was a case for trial by a jury. While in custody, the prisoner was imprudent enough to write to his daughter, urging her to tell her mother to keep a bundle which he had given her but not to open it. This letter, of course, was read by the prison authorities.

A search warrant was issued, and the police found a bundle containing not only the \$400 note, but also the one for \$2,432 and various memoranda in the Professor's handwriting as to interest, including a note of the \$483.64 which he said he had paid. The interest calculated would have covered a period up to a date in 1850, a mistake which Dr. Parkman would never have made or passed, but the worst feature was the note for \$2,432, which did not completely mature until 1851, and which Professor Webster had never suggested had been taken up. But both notes had the signature struck through. Even on the story he told, the larger note should never have been in his possession.

In January, 1850, the Grand Jury returned a true bill. The indictment contained four counts, charging the murder in four different ways. Much legal argument was expended upon this formal charge, but it was held to be good, and the objections need not detain us.

It was not until March, 1850, that Professor Webster was arraigned, and upon his assignment he pleaded not guilty. Four judges sat, the Chief Justice of Massachusetts presiding. The Attorney-General for the State led for the prosecution, and Mr. Pliny Merrick, a lawyer of great reputation, led for the defence.

The trial lasted for twelve days, and during the whole period the prisoner was comforted by the presence of some

member of his family. His wife and daughters were whole-hearted believers in his innocence, and came to sustain him. For eight days witness after witness for the prosecution came into the box, and gradually the case against the prisoner strengthened. Then Mr. Sohier, the junior for the defence, opened their case. It is sufficient to recall the Attorney-General's comment that, on such a charge and on the facts in evidence, he devoted two hours and five minutes to the law and ten minutes only to the facts. Many witnesses were called as to Webster's high character and reputation. There was no question as to that : he could not have held his chairs otherwise. The other witnesses were called mainly on two points : to throw doubt on the identification of the remains and to prove that Dr. Parkman had been seen alive and well after his call at the Medical School. On the tenth day, rebutting evidence was admitted, and then Mr. Merrick made the final effort for the defence. He spoke at great length and with florid eloquence, but he was severely handicapped by the strength of the case made against his client. The great defect was that he did not take any clear line, but suggested a number of defences inconsistent one with another. It is, of course, often the duty of counsel to suggest alternative defences, and it may be a potent criticism of the prosecution's case to show that a number of explanations, consistent with that case, are possible without involving the conclusion that the prisoner is guilty. But the jury is apt to consider the use of alternative arguments as a confession of weakness, and for this reason great caution is needed when using them. But Mr. Merrick made observations which were only intelligible on the assumption that the remains were those of Dr. Parkman, though he strongly challenged this conclusion.

The jury were invited at one time to believe that Dr. Parkman was alive ; at another that the remains were not his ; again, that they were his but brought to the School after death by the unknown murderer ; that the evidence proved the guilt of Littlefield as much as that of Professor Webster ; and also that his client did kill Dr. Parkman, but in circumstances that reduced the offence to manslaughter.

The Attorney-General replied and then the accused took advantage of his right to make a statement. It did him no good, because not only did he criticise his lawyers' conduct of the case, but, in seeking to explain what they did not, he

showed that he was evading the real bearing of the points he endeavoured to explain away.

He said that the letter to his daughter referred to a packet of citric acid, which he wanted kept to rebut a suggestion that he had bought oxalic acid. This may perhaps have been true, but the letter merely explained how the police discovered the notes and memoranda. The Professor did not explain how he came to pay, and Dr. Parkman to take, a wrongly calculated sum for interest, or how he was in possession of a cancelled note which, on his own story, was still outstanding and should not have been in Dr. Parkman's possession. With that grave aspect of the evidence he did not deal. Again, he explained the splashes treated with nitrate of copper by saying that he had been experimenting to show, among other things, the effect of nitric acid upon blood. Even if that were true—and no student was called to corroborate it—was there ever a professor who splashed a laboratory wall with gouts of blood merely in order to show that by treatment with copper nitrate they could no longer be proved to be blood? He never faced that issue.

Chief Justice Shaw summed up at length, but comparatively shortly for so long a case. His speech is one of the classic expositions of the nature and use of circumstantial evidence. It was a fair and impartial statement, but necessarily its effect was strongly against the prisoner. At eight o'clock of the evening of the twelfth day the jury retired, and shortly before eleven they returned with a unanimous verdict of Guilty.

On Monday, 1st April, 1850, the prisoner was brought up for sentence. He made no appeal to the Court and, after a homily in the manner customary in those days, was told that the penalty was death. As the last words of the time-honoured formula fell from the Judge's lips, the prisoner fell back in his chair, convulsively sobbing. For several minutes complete silence reigned. At last the tension was relieved by a formal order to adjourn the Court.

Even in 1850 the trial and sentence did not end the legal proceedings. There was an application for a writ of error, but all the legal objections were overruled.

Now the only hope was for a reprieve. Professor Webster petitioned and his confession accompanied the appeal for mercy. His version was that, suddenly maddened by his creditor's sneers and insults, he had struck Dr. Parkman down

in an access of fury, and then, panic-stricken, had endeavoured to conceal the evidence of his crime. It was of no avail, but it convinced his wife and daughters, who up to then had maintained their belief in him. It is almost certain that his confession, made to support his petition, was not true. There are facts which point strongly to the conclusion that he had planned the murder to relieve himself from an importunate creditor.

When he learned that he had to die, Professor Webster resigned himself to his fate. He sent for Littlefield and apologised for the injustice done by his attack upon him. He acknowledged that his sentence was just, and on 30th August, 1850, he met his death with patience and resignation.

Thus perished a man who, in happier circumstances, might have lived to an honourable and honoured age, but it may be doubted whether, if he had not committed the crime which brought him to the scaffold, he would not have been forced by his imprudence to resign his positions and drag on a miserable poverty-stricken life. As it happened, he enriched the records of crime by a noteworthy murder, indirectly created a precedent in medical jurisprudence, and was the cause of a classic exposition of the law of evidence.





*James Scott, Duke of Monmouth*



## JAMES SCOTT, DUKE OF MONMOUTH

**I**T is true that James Scott, Duke of Monmouth and Charles the Second's favourite son, did not have a trial—as we understand the term—before his head fell to the executioner's axe on Tower Hill on 15th July, 1685. He owed his death to another form of legal procedure, an Act of Attainder. As soon as news of his armed rebellion against the government of his uncle, James II., reached London, the Act was hurried through both Houses of Parliament and his life was declared forfeit on the ground of clear treason.

Though, then, his fate was prejudged rather than judged, the circumstances of his life and his execution nevertheless deserve a place in such a volume as this, for the story of his career, his crime, and the forces of which he was the puppet is among the most absorbing in the history of the reign of Charles II and his brother—a period when British prestige reached its lowest ebb; when the King of England was the impotent pensioner of the King of France; but a period when some of the most impressive and curious figures of our history moved across the stage. The thirty-six years of Monmouth's life are a mirror of the age in which he lived, and only by a study of his life can we understand how he came to lose it.

He was born at Rotterdam on 9th April, 1649, the fruit of a passing fancy which the exiled Charles II entertained for a lady known as Lucy Walters. Charles never seems to have doubted his paternity of the child, though many well-informed contemporaries believed otherwise. It is certainly true that Charles took Lucy Walters almost from the arms of Robert Sidney, son of the Earl of Leicester, and it is equally certain that Monmouth bore a striking physical resemblance to Sidney. That Charles openly acknowledged the child as his is not conclusive evidence, for he was cynical enough in such matters.

Lucy Walters was described by one who knew her as “a

not change the vacillation, the charm, the inefficiency, and the purposeless rashness which were peculiarly his own.

The furious uproar of the "damnable and hellish" Papist Plot to murder the King, revealed by that paragon of liars, Titus Oates, forced Charles to banish his brother James to Brussels, and immensely advanced Monmouth's popularity. The King, however, dealt his son's cause a shrewd blow by signing a declaration that he "never was married, nor gave contract to any woman whatsoever, but to my wife Queen Catherine." Three months later Charles fell seriously ill, and the prospect of his death, followed by a disputed succession, threw the Court into a ferment. Shaftesbury's enemies persuaded the royal invalid to recall James. When the latter returned to Belgium on the King's recovery he had a promise that Monmouth's growing arrogance should be checked. Accordingly the young man was removed from his command of the Army and ordered out of the kingdom. He retired sulkily to Utrecht while James, more confident of his position, moved to Edinburgh.

Two months of tedious exile disgusted Monmouth. He could no longer live without the excitement of politics, and, encouraged by Shaftesbury, he returned secretly to London. He was received with acclamation as the champion of Protestantism. Charles thereupon deprived him of all offices and ordered him back to exile. Feeling himself secure, Monmouth ignored the command, and his father, perhaps glad of his presence as a weapon against the intransigence of James, smiled, and lightly punished the disobedience by excluding him from Court.

Once again Shaftesbury set his pamphleteers to work, and they turned out declarations of Monmouth's legitimacy, mingled with arguments that, even if he was not the rightful heir to the throne, he would make the best king. Still amused, Charles countered by publishing his statement in the *Gazette* that his Queen was the only wife whom he had ever married.

Undismayed, Shaftesbury despatched his puppet on a progress through the West of England, the stronghold of Puritanism and of Whiggery. Travelling in the state fitting an heir to the throne, Monmouth was received with smiles and cheers all along his road. On one occasion he "touched" for the King's evil—a small thing, but one which made a mighty impression. Returning proudly to London, he flung himself

into the struggle to pass a bill through Parliament excluding James from the succession. He had the audacity to speak and vote for the bill in the House of Lords, but, despite his vehemence, it was thrown out by the decisive majority of 63 to 30.

This failure could make no impression on the sanguine Duke, and Shaftesbury, to cover the defeat, organised an elaborate banquet in his honour which was attended by many men of influence and wealth in the City of London. Monmouth drove to attend it in his coach, cheered more uproariously than ever by the rabble, who were quick to notice that the bar sinister was gone from the royal coat-of-arms which decorated the vehicle. Applause had turned the young man's head; he, no less than his Whig masters, was blind to the clouds gathering against his sunny popularity.

Early in 1681 Charles summoned Parliament to meet at Oxford. Surrounded by armed retainers, confident and hilarious, Shaftesbury and the Whigs gathered at Balliol College, while Charles and the Tories installed themselves at Christ Church. Rival mobs, decorated with red royalist ribbons or blue Whig badges bearing the legend "No Popery! No Slavery!" rioted in the streets. Monmouth, in the background, awaited the consummation of all his ambitions.

On a Monday morning, the first day of spring, the session opened, the Lords sitting in the Geometry School, a room in the building which is now known as the Bodleian Quadrangle, and the Commons in the Convocation House. Charles delivered a stately Speech from the Throne, emphasising his unalterable decision to maintain the legitimate succession; the Whigs listened, cynically conscious of their own power. After a few days of formalities and minor business, the grand debate on the succession was set for Saturday. Various plans were prepared and discussed, but one and all vetoed James. Shaftesbury made a personal appeal to the King that he should end all discussion by declaring for Monmouth.

"I will never yield," answered Charles coldly, "and I will not be intimidated." But not even these words could persuade Shaftesbury that he did not hold all the trumps in his hand.

On Monday morning, the King, clad in his ordinary clothes, was carried in a sedan chair from Christ Church to the Schools. Behind him came another chair, its windows shaded. No one knew who or what was inside.

On his arrival, the Commons were summoned to the Bar

of the Upper House. They trooped in exultantly, expectant that Charles had come to announce the end of his opposition to their wishes.

The King met them in his Robes of State, in which alone he could dissolve Parliament. Then they understood the purpose of the second sedan chair, and knew that he had hoodwinked them. He called cheerfully to the Chancellor to make known his will, and this official, in a sentence, declared Parliament dissolved. Charles smiled again, disrobed, and was carried back to Christ Church, his Robes following him, as they had come, in the second sedan chair.

The King had defeated the Whigs, and, until the day of his death, he was as absolute a monarch as he chose, dependent on Louis XIV for supplies, but certainly master in his own house. The Whigs, appalled by his manœuvre, scuttled back to their country houses, fearing that a proscription would follow this defeat. Within two hours of Charles's stroke, the roads from Oxford were filled with lumbering coaches and black with fugitives on foot and horseback.

Monmouth's chances of succeeding his father had vanished. Had Shaftesbury been a Cromwell or a Chatham, he could have rallied his forces, refused to accept the dissolution, and continued the session. Probably such action would have precipitated a civil war, in which, for want of a better, Monmouth would have been adopted as the Whigs' figurehead. But Shaftesbury was not a Cromwell. Faction and small violence he perfectly understood, but so great and hazardous a throw as was needed to meet Charles's tactics on that day were beyond him. He fled with the rest.

Henceforward Monmouth's decline to his abortive rebellion of 1685 was inevitable, for it was implicit in his character. He did not understand that his personal popularity leaned on Whig popularity and could not stand without it. He was amazed and almost tearful when the crowds which so recently had cheered him now shouted ribald insults after his coach. Facts, however, were powerless to alter his estimate of his position, and in the autumn of the following year he set off on another progress through the western and north-western counties. It proved as disastrous as its predecessor had been triumphal. He was narrowly watched by spies, and, when his folly provided a pretext, was arrested at Stafford and released only on giving ample sureties of future good behaviour.

Almost immediately afterwards, Shaftesbury, who had never recovered from the debacle at Oxford and now imagined his life to be in danger, fled to Holland, where he soon died, worn out by the violence of his politics and his debauchery. He was not the most prudent of counsellors, but he was an astute and cunning man, well fitted to save Monmouth from the grossest acts of natural folly. Bereft of his advice and the steadying influence of his political guidance, Monmouth now sank from one crass stupidity to a lower.

He broke the conditions of his bail by parading Chichester in state, and was probably meditating further floutings of the Government when the discovery of the Rye House Plot (a Whig conspiracy to murder—or at the least to kidnap—Charles and James) gave the King's advisers a convenient excuse to arrest all the Whig leaders. Alarmed for his safety, Monmouth retired to obscurity in Bedfordshire, where his father, who despised him almost as much as he loved him, was content to let him remain.

Soon tiring of country idleness, however, Monmouth contrived to reconcile himself to his father by betraying all he knew of the Rye House Plot and by letters of grovelling submission, which, to his disgust, were published in the *Gazette*. Next he was subpoenaed to give evidence at the trial of one of those accused of complicity in the plot. On the appointed day his name was called in court, but he made no reply. He had fled to Holland and safety. He probably never saw Charles again, for, though he came to England in strictest secrecy in November, 1684, to attempt a reconciliation, it is doubtful whether an interview between father and son took place.

Early in 1685 Charles died, tortured by the ignorance of his doctors as much as by his diseases. James ascended the throne without disturbance if without acclamation. Before eight weeks passed, Monmouth had yielded to the counsels of desperate Whig exiles in Holland, and was preparing an expedition to snatch the crown from his uncle.

He set out in three ships, eluded James's fleet, which was watching for him in the Channel, and, on 2nd June, landed his tiny contingent at Lyme Regis. Sanguine as ever, he anticipated a frenzied welcome, but the townspeople inspected his expedition with mild interest rather than enthusiasm. In a manifesto he asserted his legitimacy, but laid no claim to the throne, referring the succession to Parliament. He came, he



declared, to restore liberties which had been destroyed, to bring toleration to all Protestants ; and he called on all Englishmen to join him against a Roman Catholic king.

As he moved inland this appeal to religious fanaticism brought a harvest of Puritan recruits, which was swelled by the news that his troops had been successful in two slight skirmishes with the local militia. Nevertheless, the poor miners and peasants who, remembering his first progress, came to fight for handsome King Monmouth (for so they called him to avoid confusion with his uncle, since both were named James) drove him to despair. He had counted on the powerful Whig families rallying to him ; not one of them moved.

As a last device he proclaimed himself King at Taunton on 20th June, and set a price on James's head. Then, undecided and sick at heart, he wandered off with his bands through Wiltshire. On 5th July, finding James's forces, commanded by John Churchill, later the first Duke of Marlborough, encamped on Sedgemore, near Bridgwater, he planned to surprise them. His attack was well conceived, and, if his difficulties in crossing a broad dyke in the darkness had not given the royal army the alarm, the surprise might have been complete and victorious. As it was, Monmouth's peasants fought obstinately and bravely, using scythe-blades lashed to staves with great effect.

Undisciplined valour, however, even though inspired by religious zeal, had small chance against artillery and Colonel Kirke's regiments fresh from the rigours of campaigning in Tangier. As the remnant of his poor followers was driven in confusion from the field, Monmouth fled. For two days he lay hid, but on the third he was discovered disguised as a rustic, and lying under some straw in a ditch " with a few peas in his pocket." He was brought to Vauxhall, placed in a barge and conveyed by night to the water-gate of the Tower.

His speedy execution was, of course, inevitable under the Act of Attainder passed against him ; but, broken in spirit, he seemed to have imagined that he could yet melt James into pardoning him. He wrote to his uncle, utterly abasing himself and pleading for a personal interview on the ground that he had an important secret to divulge to the King's ears alone. Ever suspicious that plots menaced his life, James consented to meet him, hoping for a discovery which would enable him to destroy some among his enemies.

What actually passed between uncle and nephew is not known, except piteous pleas for mercy on the one side and their contemptuous rejection on the other. To do James justice, we must remember that he never believed Monmouth to be his nephew, and that the latter had forfeited all claims to consideration by libelling his uncle on every occasion, and by raising rebellion in his realm.

Soon after the King left him Monmouth had two meetings with the wife whom he had never loved, and whose respect he had long destroyed by the callous parade of his infidelities. As a last expedient he wrote again to the King, offering to enter the Church of Rome if only his life might be spared. James did not send an answer, but commissioned priests to visit the prisoner and examine the sincerity of his sudden change of heart. These reported drily that it was his neck and not his soul which the Duke of Monmouth most desired to save.

When the time came for him to die, Monmouth's fortitude returned to him. Above all things he loved to appear before the people; he had an instinct and a talent for public occasions, and the knowledge that this must be his last may have nerved him to acquit himself worthily. Whatever the reason, it is certain that never in his life did he behave with so much dignity and command of himself as on the scaffold.

If the accounts of his execution be true, a man dying bravely can seldom have suffered so many indignities. He went out of the Tower to the scaffold on Tower Hill, where a huge crowd was assembled, attended by the Bishop of Ely, the Bishop of Bath and Wells and two other divines, whom the King sent him as "his assistants to prepare him for death."

When he mounted the scaffold and saw the executioner, he asked, "Is this the man to do the business?" Informed of his identity, he added, "Do your work well." Then he began to speak, saying, "I shall say but very little. I come to die. I die a Protestant of the Church of England."

Before he could utter another word, one of the four "assistants" interrupted him; and his speech degenerated into a bandying of words concerning the doctrines of the Church of England, the sincerity of his penitence, and the suitability of his remarks. The four clergymen were determined to wring from him a public acknowledgment of regret for his rebellion.

After a bout of bickering this dialogue took place:

*Monmouth*: "God be praised! I have encouragement

enough in myself. I die with a clear conscience ; I have wronged no man."

*One of the Assistants* : "How, sir ? No man ? Have you not been guilty of invasion, and of much blood which has been shed, and it may be of the loss of many souls who followed you ? You must needs have wronged a great many."

*Monmouth* : "I do, sir, own that, and am sorry for it."

*One of the Assistants* : "Give it the true name, sir, and call it rebellion !"

*Monmouth (speaking in a very low voice)* : "What name you please, sir. I am sorry for invading the kingdom, and for the blood that has been shed, and for the souls which may have been lost by my means. I am sorry it ever happened."

Directly he finished this sentence, the sheriff, who had been standing close to hear what passed, turned to the crowd and shouted at the top of his voice : "He says he is very sorry for invading the kingdom."

One might suppose that, having obtained so much satisfaction, the clergymen would allow the wretched man to meet his death. They began, however, to scold him again about the sincerity of his repentance, to bully him into further confession of his guilt. But when Monmouth stood silent, refusing to add to his humiliation, the divines fell on their knees in "solemn commendatory prayers, which continued for some time."

Thus refreshed, they turned a third time to extracting confessions from their victim, even exhorting him to commend his wife and family to His Majesty's protection.

To this request Monmouth pertinently replied, "What harm have *they* done ?"

The assistants made no answer, but recommenced their prayers. When they finished, Monmouth called the executioner to him, and began to prepare himself for his end. He knelt, laid his head on the block, and asked to feel the edge of the axe, fearing that it was not sharp enough to sever his neck at one stroke. Then, amid a torrent of pious ejaculations from the assistants, he died.

His sacrifice, unfortunately, was not sufficient. Jeffreys and four assistant judges were unleashed on the West, with instructions from James that their justice should be tempered with ferocity. The number of those executed has been unfairly exaggerated by such historians as Macaulay ; probably

not one hundred and fifty people were actually hanged, though the fate of the hundreds sold into slavery in the West Indies was hardly more merciful.

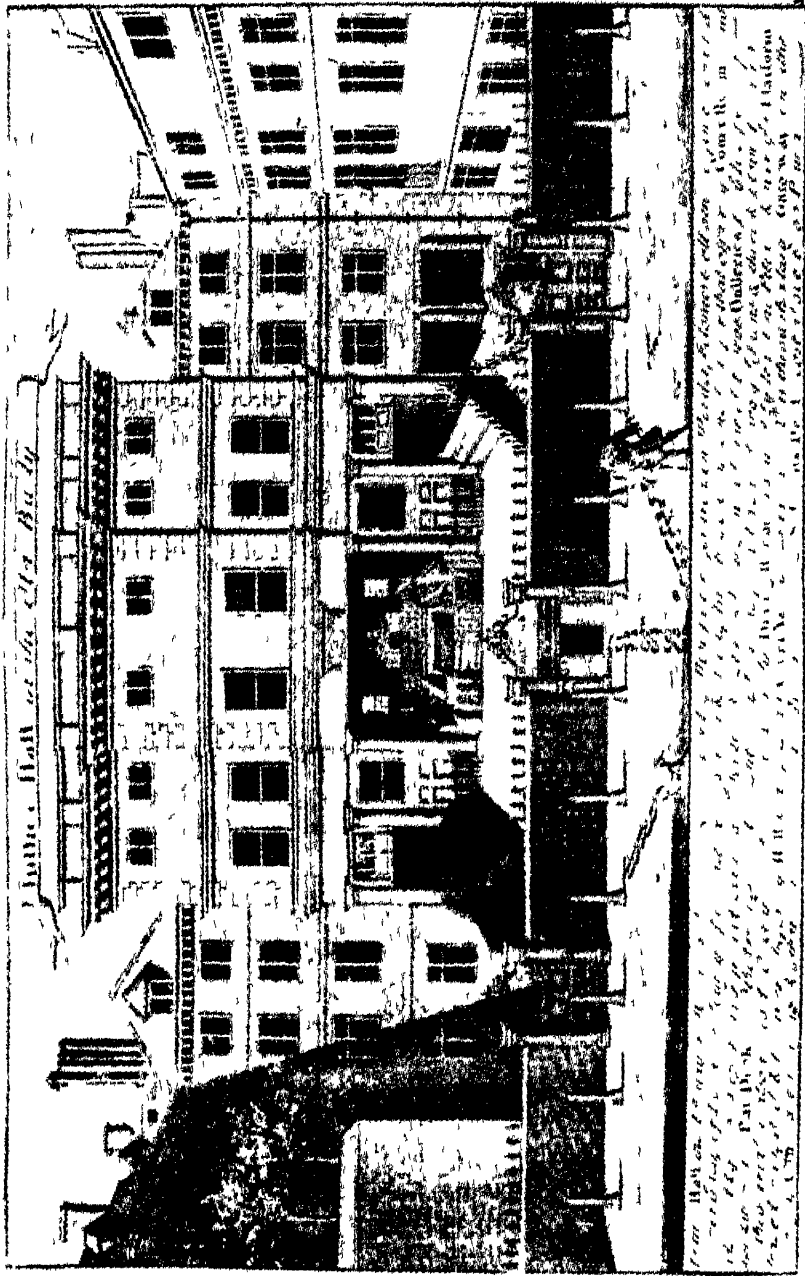
The vindictive mockery of Jeffreys' trials, the tarred corpses swinging on gibbets, and the memory of Monmouth's gay laugh and gallant elegance created a legend in Wessex. The martyrs of the Bloody Assize and the prowess of "King Monmouth," in love as in war, are crystallized in rambling legends which I have heard, even in this twentieth century, from old men in the Mendip Hills and the hamlets of the Wiltshire Downs.

Happy is Monmouth that in one corner of England his memory is treasured as good and great ! For he was in truth a poor creature, sensuous, vain and silly. Shaftesbury was his undoing, just as a mistaken estimate of his own personal popularity was Shaftesbury's fatal mistake. The great Whig filled Monmouth's empty head with resounding phantasies until he sincerely imagined himself as magnificent as Shaftesbury's hired mobs pretended him. He certainly deserved his fate, and it is ironic that such a handsome coxcomb should be transformed by a warm-hearted peasantry into an almost mythical hero who, when his country needs him, will return from the dead and call on the faithful to follow him to a Puritan victory.





JONATHAN WILD



JUSTICE HALL, OLD BAILEY

See page 105

# *The Yelverton Case*





## THE YELVERTON CASE

ONE summer evening in the year 1852 a party of friends and relatives were escorting a young and very pretty English girl, Miss Theresa Longworth, to the quay at Boulogne. Her sojourn in France had been for her education in a convent. Several of her kinswomen had married Frenchmen. Now she was proceeding to London.

One of Miss Longworth's sisters, Madame Lefevre, on leaving the boat for the shore, threw her a shawl, thinking that after the sultry day the night was sure to turn cold. As it chanced, the shawl was caught by a young artillery officer named William Charles Yelverton.

Very politely, he wrapped it round the young lady's shoulders; and from this slight but romantic episode complications arose which provided our Courts in Ireland, Scotland and England, to say nothing of the Press and public of the three kingdoms, with legal puzzles and social thrills which were spread over a long period of time.

Even the passage to England was eventful.

During the journey the two casual acquaintances evidently formed a rapid but agreeable intimacy.

How far this went will always be a matter for conjecture. The shawl, in due course, was supplemented by a plaid. The voyage was, without doubt, romantic.

I need not deal with all the possibilities. Imagination might, and did, make much of the encounter. But no imagination could have invented a story more curious than the one which actually ensued. In the end the law had to consider a number of intricate propositions based on hotly-disputed alternatives, by the light of its own far-reaching principles—a light that is high, dry and scientific.

A few details may be of interest concerning the origin and relative importance of the two families of Yelverton and Longworth.

The first Lord Avonmore in the peerage of Ireland, Barry Yelverton, was a capable, high-spirited lawyer, and an ingenious politician. He served in the highest legal offices, became Chief Justice of the Court of Exchequer, and lived long in Irish memories for his amiability, ambition, sympathy, and personal extravagance.

Barry Yelverton's elevation to the peerage belongs to the year 1795. His baronial title of Avonmore was taken from a rivulet in the county of Cork, and this honour was followed in the year 1800 by a viscounty.

Young William Charles Yelverton, at the time of the eventful meeting with Theresa Longworth at Boulogne, was the heir presumptive to these family honours. It was as Major the Honourable William Yelverton that he was to become notorious.

Of the Longworth family it is not possible to speak with equal certainty. Theresa Longworth's father had been a silk merchant in Manchester. French commerce had brought him success. He seems to have acquired a modest property in Lancashire, to have married some of his many children off with credit, and to have done what he could for their settlement in life.

The name Longworth, racy of the soil, is in itself suggestive. If, in speaking of her forebears, Miss Longworth occasionally exceeded the facts, the temptation may have been great, for the time was to come when all statements made by her would be traversed by hostile agents paid for the purpose. The Yelvertons themselves, perhaps, had no great antiquity to claim. But a peerage in the offing and a love story in the forefront, embellished with scandal and made public in a hundred ways, excited the population of these romance-loving islands with a curiosity hardly to be surpassed.

On arriving in England the two acquaintances said farewell for a time.

They arranged to correspond.

This correspondence was preserved, in spite of more than one effort to secure its destruction. Nowadays, such a correspondence might provide a nine days' wonder. In the Victorian age it made, in one way and another, a nine years' wonder. And we may consider at once a prologue and an epilogue. Those early letters, like that earliest meeting, are among the *Prolegomena*. They date from 1853, and, beginning with a mere note of inquiry on both sides, they evinced an

increasing ardour. But, from the first, there was a stronger hope on one side, a stronger desire on the other.

The two personalities were very well matched as far as powers of expression went. Neither could be called a fool. Miss Longworth had profited by her education. Captain Yelverton, at twenty-eight, having already seen some service, was a seasoned man of the world. Possibly it was by way of experiment, after making special efforts to keep in touch with her, that he introduced her to another man, a yachting friend. This episode was made the ground of baser suggestions later on. Here, however, it is clear that Miss Longworth behaved with exemplary caution. Desire may be different in kind or degree. Such experience is frequent enough in sex problems. Theresa Longworth, as a girl of twenty, had a distinguishable force of character. Animated by true love or not, she could hardly do otherwise than accept attention showered on her in that spirit of hope which is common in the young of her sex. Henceforward her single-mindedness in the pursuit of one object attests her sincerity. If a heart counts for anything at all, some credit for this also must come into the reckoning.

The man was of another calibre altogether.

“Man’s love is of man’s life a thing apart,  
’Tis woman’s whole existence.”

It will readily be believed that William Yelverton was double in design, and, indeed, fundamentally base; and, though the unflattering portrait we now possess was drawn by himself in his amorous epistles, he cannot in all senses be deemed extraordinary in his selfish attitude to the sexual problem of the ages. Economic pressure, reinforced by satiety, may cause love to turn to hate.

The letters in question, however, at first blush—and the world which had no business ever to read them affected to blush at them—appeared the strangest medley of gush and sentiment; a farrago of allusiveness, evasiveness, and sometimes of cantankerousness. Interchangeably connected in a curious hotch-potch, they were subtly flavoured by a woman’s tuition, pervaded by a man’s unattractive candour, and by this process rendered unique. Thus the affair went on.

Enforced separation in those martial days should have meant that love would grow fonder. Letters were necessary. Endearments were mutual.

"At Malta," so wrote the young officer, "the very stones got up and told me strange, wondrous things about you."

Theresa caught up his second name, and gave him the pet one of "Carlo."

"*Carlo mio carissimo.*"

"*Theresa mia cara.*"

The letters were studded with interpolations in Italian or French, one of which was destined to turn the scales of justice by more, perhaps, than "the estimation of a hair."

But other events were now moving which had a vital influence.

We turn from the written endearments of children in love to the national commitments of the Crimean War so far as these concern the tale.

Here, indeed, the romantics are entitled to conjure up an attractive picture of adventurous life. Old albums, newspapers, the novels of writers like "Ouida," the comedies of Robertson, are reminders of a period which will never be out of date, though in recollection they stand out quaintly now.

Theresa Longworth might be corsetted, ringletted, crinolined. Or else, demurely attired, she might assume a suitable professional garb in the service of her country, whilst sighing in her vivacious letters for the life of the *vivandière*.

Yelverton, on active service, smart enough as a soldier, appears heavily and uncouthly bearded, and is ready to play the *beau sabreur* to the life. Nevertheless :

"It is the little rift within the lute  
That by and by will make the music mute."

Thus, in due time, when certain rumours began to spread, Yelverton took up his pen as if it were a sword and wrote .

"If you can find anyone of the male sex who calls himself a gentleman who has given you pain by the conjunction of our names, I'll make a point of getting leave to go down and fight him, as we are quite idle in that way."

And this was "before Sebastopol."

Miss Longworth had been full of yearnings and qualms. It had been the need of the hour, coupled with the lure of a personality, that had taken her out to Russia as a nurse; for which occupation, in those pioneering days, she was better

equipped than many other women by reason of her conventual training.

Here, indeed, the young woman for a while scored heavily. At Galata the General and his wife, Lady Straubenzee, received her most hospitably as a friend. Henceforward they were to stand by her as far as they could. Naturally they soon became familiar with a situation that seemed to hold out the prospect of a marriage, although, like other people, they might question the wisdom of such a step.

The endowments of the Yelverton family were not quite in keeping with the pretensions of their rank. The young man himself had only junior officer's pay. He was beholden to a stern and capricious relative for a moderate supplementary allowance. He had indeed little chance of ever becoming a rich man, whatever incidental dignities the Avonmore title might eventually bring.

And so a querulous attitude can be traced even in some of the earlier effusions. They became far more querulous later. He seemed to decline in ardour as a prospective husband, but he remained constant in asking for love. More, he demanded it.

How did Miss Longworth treat these dubious asseverations?

She noticed, with a woman's apprehensiveness, where so much was at stake, every sign of reaction or indifference. She is coy and challenging by turns. . . . She will give him his freedom. . . . She will retire into a convent. . . . Then, from the man's side, a professed devotion ebbs and flows, but, after a while, the elusive correspondence goes on again with unflagging spirit.

At one point, perhaps to test him, Theresa enclosed the wedding-cards of some friends. They seem to have reached Yelverton at an inopportune moment. He had begun to waver in his intentions. Unblushingly, he affected to believe that these were her wedding-cards, of a type apparently now out of fashion, and he seized on them as a pretext to bring the whole affair to an end, in words of sober acceptance and mournful congratulation.

Her reply was hysterical.

The affair did not come to an end.

As she had written: "I cannot live without my dream."

She drew him to her again. The attachment that had begun was continued. The war ceased. Life, a joint life, of

some kind, was evidently in prospect. Correspondence of a vivid type illustrated the terms on which the two parties suffered each other to exist during the following two or three years.

The next meeting was in Scotland.

There had been some talk, undoubtedly, of a possible secret marriage at Balaclava, to be negotiated by a Greek priest. But it came to nothing. It is only of importance because the suggestion itself might imply some kind of a promise. Certainly, whether then or later, Yelverton's promises might have been considered suspicious by her who received them.

But she would be likely to love on, in spite of that. His dubious conduct might possibly be explained. . . . He entertained no doubt as to his own manly qualifications. . . . He did not disguise his desires. . . . But he was equally frank about his financial difficulties and the certain displeasure of his family. Thus towards his *inamorata*—they both loved these Italian expressions—he showed himself appreciative, fearful, unscrupulous, passionate: everything by turns and nothing long. The single-mindedness of Theresa herself remained. To this she added an unswerving tenacity. A good many questions were arising during this Scottish interlude. To put one of them bluntly, it was: Could she bring him to the church door? To put another succinctly: What was the actual relationship?

This part of the matter is full of puzzles, the intricacy of which it is our business to elucidate, especially in view of the interesting fact that the drama now transferred itself to Edinburgh.

Could they have thought of a secret marriage?

The Scottish laws of marriage are laws not to be trifled with. Their principles, so lawyers in Scotland have been known to affirm, are profoundly simple. The methods by which they are vindicated are different from those admitted by matrimonial usage in England. In this case, strangely enough, they were to be brought into contact with Irish custom, law, and religion—a complex alarming to think of. Eventually, might not even an alignment with English law have to be taken into account?

For the moment, however, I am concerned with Scotland alone. In Scotland we face certain facts.

A secret marriage in Scotland might hold validity which

elsewhere would be denied. More would depend on those to whom it might be known than on those from whom it had been kept. At any rate, intimacy of a kind existed for a long time, an intimacy of letter-writing, of personal association, if nothing more. In Edinburgh, Miss Longworth did not live alone, but with a Miss Macfarlane. She was frequently visited by Yelverton, and the possibilities included the free-lover's intrigue; the preparatory experiment; or any other twist of the amorous train. Yelverton could write kindly, adoringly, but could also make it clear that he was sought after, and this made Theresa wretched. His brother officers might know of Theresa's existence, but they would naturally be discreet about it, and Time would tell the truth about things that it was not their business to know. And Miss Macfarlane, under whose roof Theresa stayed, might have opportunities of judging facts more accurately than anybody else. It was at least during this time that the suggestion arose of a marriage under Scottish forms, and there was always a religious scruple in Miss Longworth's mind. What happened, then, as to a possible secret marriage in Scotland, remained in dispute for years. But this religious point first grew important, even vital, when Yelverton proceeded to Ireland, early in 1857, for four years had elapsed by now. In Ireland, Yelverton was at home. And Theresa here had the strongest affinity with Irish thought because of her faith.

I must pass very rapidly over meetings, journeys, avowals, and many little episodes which connected the two together as lovers. Whatever the reasoning or process of events that led up to it, a form of marriage was gone through between William Yelverton and Theresa Longworth in the month of August, 1857, in the chapel of a little village—Rostrevor—and a certificate was issued, signed by the parish priest, to the effect that the two parties had been joined together *in matrimonio legitimo*.

That would seem to have set the matter at rest, but there might still be a flaw in such a certificate, in view of a conflict between Church and State which had been going on for a good many years.

Undoubtedly after the Rostrevor ceremony the two were much together. They travelled in Wales, England, France. They stayed, recognizably, in hotels.

This went on till early in 1858, when Theresa, unacknowledged, whatever her status, began to complain of all the



uncertainty that had become her portion—uncertainty and neglect. "*Crudelissimo Carlo!*"

She fell ill in France. Yelverton, absent, wrote kindly. It was a cautious kindness. His letters were addressed to her as if she were Mrs. Yelverton, but guardedly, and on secrecy he insisted more and more.

Theresa realized the situation. She might be deserted. And deserted she was. Presumably her illness had been from the most natural of causes. But meetings were over. Soon even the kind letters ceased.

Then, in the summer of 1858, the victim of these twists of fate received astounding news. A marriage had been performed between Major William Yelverton and a lady of the name of Forbes, herself the daughter of a distinguished officer. This lady had been but recently widowed. To Miss Longworth the information was imparted by a member of the Yelverton family who invited her to accept the position of a discarded mistress, and suggested that she should quietly depart to the colonies, where all would be done for her that could be done.

Time passed. The world heard nothing of these events for a long period of time. And then, by a devious route and under peculiar forms, the most remarkable marriage question of modern times was raised in an Irish Court, in the shape of an action for the recovery of money. This case is known as *Thelwall v. Yelverton*.

For now the Thelwalls come into the tale.

How, it will be asked, had Miss Longworth existed? Nearly three years had elapsed between the scene at Rostrevor and the action in Dublin. What had she been doing? What had her friends been doing? And Yelverton? Answers divide naturally: surmise on the one hand, fact on the other.

For Theresa—the surmises. She had sustained herself by the hope that something might be done, for certainly she was not friendless. She had been working hard to get some legal action taken. But formidable barriers had arisen.

For Yelverton—the facts. He was living at Edinburgh, received, of course, in Society, with a lady known by his name, who was indulging him with a family of children.

But who were the Thelwalls?

The Thelwalls were homely people who provided for Miss Longworth's needs and allowed her to run up a bill for necessary expenses. She wanted to gain the rights of a wife. People

who trusted her and supplied her with necessaries could sue her husband—if she had one. This simple action, no doubt, was contemplated long before it was taken. But there were two great impediments. The sea ran between. The Yelverton domicile was now in Scotland. Far-reaching differences separated the matrimonial laws of Scotland and Ireland.

Major Yelverton had skilled advisers. Every step that could be taken on Theresa's behalf could be met by clever counter-measures, by subterfuges, and even by ingenious denials of access to the Courts, simply because a marriage certificate could be produced in Edinburgh, proving the marriage with the widow. Theresa might be an adventuress, said the observers. Or she might not be. She might be a lawful wife. It was hoped that *Thelwall v. Yelverton* would solve the riddle once for all.

The case was opened in the Irish Court of Common Pleas in Dublin, where excitement reigned for ten days over the revelations of a trial which had no parallel. Chief Justice Monaghan was the Judge, Serjeant Sullivan being for the plaintiff Thelwall, and Mr. Whiteside for Theresa Yelverton, the name by which she was actually addressed when in the witness-box. She appeared to be "a young lady of superior intelligence and vivacity, with a face very sad in repose." Everything about her appealed to the susceptibilities of the jury. Of Yelverton it is enough to say that he appeared to feel his position acutely throughout the trial.

All the meetings and journeys and letters and innumerable episodes so far unrelated here, and immaterial for further exposition now, came before the Court. No doubt the letters were thrilling in a sense, but many inexperienced people held that the reading of private love-letters in Court was a mistake—that letters such as these, capable of so many interpretations, should be inadmissible in evidence. The testimony of many independent witnesses went far to establish the truth of the story which I have related already, and was in the main a proof that a woman had been too trustful and a man too audacious in deceiving her. This is not to acquit her of imprudence, or to elevate her to any high position of moral worth. Probably her ambition was a mistaken one. But still she had herself to think of. The intrepidity with which she fought her case was wonderful.

The other side was equal in determination, but many witnesses were brought forward whose bias was manifest and whose words were discredited. No doubt was shown as to the rising indignation against Yelverton which permeated the atmosphere within the Court and outside. The affair became notorious as one which evoked such feelings that even judicial impartiality might be affected. . . . This would be all the better for Yelverton, if an appeal should be raised. . . . Socially and personally he was on the horns of a dilemma, with his rising family away in Edinburgh.

And the result was a victory for Theresa. After passionate forensic speeches which brought tears to the eyes of the susceptible Irish crowd, and after a summing-up by the judge which concealed nothing as to his own opinion, the jury returned a verdict to the effect that the marriage was a valid one. The scene in Court was immense. . . . Barristers threw up their wigs. . . . The cheering was not suppressed. . . . The judge beamed from the bench and very nearly joined in the demonstration.

Crowds, when Theresa emerged, took the horses from her carriage and drew her to the Gresham Hotel.

She addressed them from a balcony :

"My noble-hearted friends, you have by your verdict this day made me an Irishwoman ! I shall live in your memories, as you do in my heart to-day !"

So, as the Honourable Mrs. William Yelverton, Theresa was hailed on all sides, her courtesy-title being bandied from mouth to mouth in every tone and brogue, whilst sentimental satisfaction flashed the news across the sea to Scotland. It caused bewilderment there.

The consternation of the lady's opponents was only matched by the interest of the public. It soon became evident that the matter was not finally settled, but would be made the subject of an appeal. Here was great material for lawyers.

There were, indeed, long delays.

The date of the proceedings in Dublin had been late in 1861. Scotland introduces the next phase, in the shape of rival actions before the Lord Ordinary, Lord Ardmillan.

Once more the whole story was gone through with every conceivable embellishment, from which the most salient fact emerging was that the curious Scottish law of marriage, thus evoked, could be interpreted in very different ways. It

must be remembered that an Irish decision could not run in Scotland, and the jury had gone out of its way to declare that the lady they had declared to be Mrs. Yelverton should so be regarded also in Edinburgh. Further, special importance attaches to the fact that, by their verdict, the jury had declared Major Yelverton to be a Roman Catholic. But was he? He himself denied it. He had, in fact, no preference, really. The Yelvertons were Papists or Protestants, being a family with several branches; and, as an officer in England, Yelverton had favoured the Church of England or the Scottish Episcopal Church impartially. But in Ireland it was an offence for an Irish priest to marry parties in this way, unless both were of the same mind, as professed Papists. And this part of the issue was desperately confused. Wherever the truth might lie as to this, Lord Ardmillan could not acquiesce in the verdict given. He declared the marriage void under Scots law.

"This judgment," he said, "has not been reached without anxiety and sympathy for the sad fate of the pursuer."

So Theresa was defeated in that court. "Intense, persevering devotedness" the Judge had declared her to have exhibited. July, 1862, was the month of this happening. The indomitable woman began again.

The case was reopened in the December of this same year, 1862. Great labour awaited the Judges of the Court of Session. Those famous letters, with all their absurdities, were analysed and dissected yet again. Yelverton had hinted that Theresa had tampered with them by cutting pieces out and otherwise altering them: but the only expression which caused much extra strife was in Italian—*sposa bella mia*—an admission that he regarded her as his wife—which the man tried to prove that he had never written. Otherwise, the correspondence only revealed itself as a tissue of sentimental nonsense, the quality of which could only be judged by amorous experts, and then by no means infallibly. In Dublin, Yelverton had interpreted these letters generally in his own way.

It was a very warm way. . . . He meant to seduce a woman's affections and let her look after herself after that. . . . He thought that a man's prerogative went naturally so far. . . . He considered a bachelor's life might be best; or else some secret arrangement, very well matched to his temperament,

which was that, he said, of a savage. As she had written that she was unconventional, he conceived that she would accept the obvious sequel—that they should love freely short of marriage. More than one ebullition of his theories shocked the Dublin Court by its cynicism. In general, it may be said that he showed contempt for any rational or gentlemanly code in the pursuit of women.

But Theresa, by her actions, had proved that at least she wished for the regularising of her too rash amour. And when we turn away from the mere human feelings which underlay this desire, and go back to the law, it is interesting to see how far the individual Judges of Appeal were minded to treat the issues before them—issues which they repeatedly declared to be most serious, and collectively most remarkable.

The Lord Ordinary, in the Court below, had remarked on the case as being “of the utmost importance to the law,” and had given to the pursuer more credit for adroitness than for wisdom. Now, in the higher Court, Lord Curriehill and Lord Deas, without committing themselves to any high encomium, found sufficient credit for Theresa, and sufficient substance in her plea, to justify her claim to be the lawful wife of William Yelverton. Lord Curriehill put the conclusion clearly: “I agree that there was a secret marriage, not to be known for some time. . . . Mindful of suffering to others, and regretful of the unconventionality, I must pronounce them married.” There were differences among the Judges, but a majority decided in this sense.

And so Theresa Longworth was found to be Theresa Yelverton according to the law of Scotland.

The decision was received with great satisfaction in many quarters. Surely (it was thought) the matter might now take a rest. It did not.

There remained an appeal to the House of Lords. In the interval, no charge of bigamy was allowed against William Yelverton.

On 28th July, 1864, the House of Lords—Lord Westbury, as Lord Chancellor, presiding—annulled the Scottish and Irish judgments given in Theresa’s Longworth’s favour. They did so by a bare majority. Lord Brougham agreed with Lord Westbury that Theresa had made out her case, but in his absence his judgment was not received. **Against those**

opinions were the decisions of Lord Chelmsford, Wensleydale, and Kingsdown.

So fell the blow which crushed all the hopes and the life of Theresa Longworth and gave, simultaneously, the highest legal sanction to the other marriage. Mrs. Forbes, in virtue of this decree, became Major Yelverton's lawful wife.

The decision arrived at by the House of Lords was thought by many to have been influenced by considerations of public policy, a notion that derives some slight support from the result of subsequent proceedings. For the end was not yet. In 1867 the decisions were reviewed on technical grounds yet again. The result was adverse to Theresa Longworth. Finally defeated, after going through four actions, she did not cease from prophecy, but declared in a spirited letter to the Press that after these years of torture and delay she would and could fight on. . . . Had there been any child as the issue of this fatal entanglement, things might have been different. But there was nobody else to fight for. So Theresa succumbed. . . . She faded away from public view. . . . Major Yelverton had been suspended from his military duties in 1861. He spent the rest of his life unhappily.

In reviewing thus briefly the whole course of this lamentable affair, for it wrecked a woman's life, it is impressed very strongly on my mind that from the beginning Theresa Longworth was a victim of the differences in our matrimonial laws.

To bring the three kingdoms into line on many subjects has always been desirable, and we are still unsettled and uncertain here. But at the root of the final decision lies the application of a principle jealously guarded in England which discourages the secret marriage, and is all the more zealous in such cases for the observance of those outward forms which experience has shown to have a profound and real significance. The Irish and Scottish forms, being anything but flawless, stand out in aggravation of any irregularity committed on either side.

Legally, the vindication of principle often makes the hard case. We are very familiar with the fact. But nothing in this can rule out the human element, and in this aspect neither mercy nor pity may be withheld.

In the world's rough verdict Theresa Longworth won her

case. Lord Curriehill thought so. Lord Westbury thought so. Lord Brougham thought so. We are too far away from the events described to place ourselves alongside the Irish Chief Justice who saw and heard these people and could judge them in their personalities ; and we cannot interrogate any witnesses. But, before those who were judging, the human factor became impressive. The majority of the Judges, whether for or against the woman's claim, bore testimony to her ability and force of character, to her intense determination, patience, courage. And those who were adverse largely on technical grounds. . . . She had broken the rules. . . . So had the man ; but he was the more responsible, after all. . . . And yet those rules, said the House of Lords, were necessary ; deeply based, to be applied with due regard to the probabilities of the future, the heritage of posterity.

Theresa Longworth survived her legal misfortunes for some fourteen years after her challenge to the Press—*noted above*—was given. . . . She had anticipated another struggle with the Scottish law, but this was not to be. She left the country and died abroad.

A butterfly broken on the wheel ? Not, at any rate, the butterfly of tradition. Hers may have been the spirit of the adventuress ; but herein she was in a great company ; and she did not flutter her life away. Amazing as the other marriage was, she provides the most amazing part of the whole story. Her resolution was immense. True, she had little to gain from a formalised union with a man who could not have made her happy ; but a mere domestic ambition was not her only goad. She had to acquire a status if life was to be tolerable ; and no woman worth the name, fooled as Yelverton had basely fooled her, could allow without a bitter struggle the name she believed her own to be filched by another.

The history of William Yelverton for the rest of his life is obscure. He duly succeeded to the title, becoming the fourth Lord Avonmore. He spent much of his time in France, and died at Biarritz in 1883.

Normal justice has no more to say to him, but poetic justice seems to have rebuked him, after brooding silently on the subject for a good many years. With the sixth Viscount's death, in 1910, the title of Avonmore became extinct. And that is the end of the story.

*Jonathan Wild*





## JONATHAN WILD

MANY criminals have owed their fame to some peculiar incident or accidental skill, but this man almost realised the novelist's conception of a master criminal, never committing actual offences, but exercising complete control of the criminals of a great city. For many years Jonathan Wild was almost the undisputed lord of the villains of London, and, if use had not dulled his sense of changing times, he might easily have retired to a life of dignified ease.

The times were favourable to the genius of the man. London had ceased to expand its civic boundaries, but the population still continued to spread over the neighbouring parishes. There was no adequate police system. No proper supervision of the haunts of vice or of prisons. No proper lighting, and, outside the city limits, very little attempt at local administration. It was not until Wild's career had almost ended that the Alsatias of London were finally destroyed and attempts were made by the city to light up the streets at night.

The criminal, pursued by the person he had robbed, could he gain but a short respite, would almost inevitably run to earth into some boozing-den where it was useless, and indeed dangerous, to follow him. The system of rewarding thief-takers had, indeed, caused certain undesirables to take upon themselves the duty of apprehending criminals and to seek the minor public employments where such rewards might fall to the holder.

Before the advent of Wild, the profession of thief in nearly all its ramifications was under a cloud. The common law had not placed too great an obstacle in the way of his reaping the fruits of his toil. As a rule a thief must sell the spoil, and the receiver came into conflict with the law only in the mildest way. If he received goods knowing them to have been stolen, he committed a misdemeanour, though, if the act of receiving amounted to giving the offender aid and comfort, he was also liable as an accessory after the fact. But under Dutch

William the mildness of the common law was replaced by unsympathetic statutes. In 1691 all buying or receiving with knowledge that the goods were stolen was declared to make the receiver an accessory after the fact. Once Parliament intervened, legislation grew. Under Queen Anne the receiver was made accessory to the felony—a dreadful innovation, for thenceforward the receiver could be hanged as well as the thief. These statutory experiments made thieving an unprofitable business, for receivers became scarce and shy, and would not take the risks of their trade at rates which would profit thieves to run the risks of theirs. But London and the parishes near by were filled with a shiftless, hungry population, ready for plunder and disinclined for steady work.

It was on these conditions that Wild brought his genius to bear. His early life gave no hint of his future greatness. He was born at Wolverhampton in 1682, the eldest of the five children of a carpenter, a most respectable man, whose equally worthy wife sold fruit in the local market. They educated their children as well as they could manage, and, when he grew older, Jonathan went apprentice to a local buckle-maker. He served his time and continued as a journeyman. He seemed settled in life. At twenty-two he married, and soon became a father. But for some reason or another he tired of the provinces, and about 1695 he came to London as manservant to a lawyer. Of this avocation he soon tired, and in a short time was back at his trade in Wolverhampton. His return to his native town was not of long duration. Leaving his wife and child, he went back to London, this time as a journeyman. He soon fell into debt and was confined in the Wood Street Compter, a prison where felons, roysterers and debtors of all ages and sexes were confined. In those days the prisons were a breeding-place for vice, and Wild soon learned all that there was to know, not only of crime, but also of the profits obtainable by the minor officers of the law.

He was not a beauty, and, moreover was short and lame, but he was civil and insinuating. His four years at the Compter were not too disagreeable. He pleased the keepers, who soon gave him "the liberty of the gate," and his consequent freedom to run errands enabled him to earn some money and to prove his willingness to oblige. In course of time he was made underkeeper of the "rats," as those brought in on

night charges were termed. Nor in these duties was he deprived of the society of the other sex. He formed an intimacy in the prison with a debtor who went by the name of Mary Mulliner and was supposed to be married. Her calling in life was that of thief and street-walker. The pair agreed so well that they arranged a partnership, and, obtaining their release, they set up a brothel in Lewkenor's Lane.

Wild soon changed the plan. He became tenant of an alehouse in Cock Alley, Cripplegate. He and his consort had formed a valuable acquaintanceship with the thieves of London. The success of the alehouse was assured. It was then that Wild's apprenticeship to vice at the Compter began to yield him profit, and he embarked on the career which led him to fortune. His advice was sought by his customers, who found it profitable, and so did he. Indeed, he obtained the greater profit, since, by taking no risks and advising them all, he necessarily gained more than if he had ventured forth with them.

Soon afterwards Jonathan and Mary parted. She had served his purpose. There was no quarrel, and afterwards she at times brought him business. Perhaps he was indisposed to share her favours with others. In any case he did not intend to live alone. His next woman was Betty Mann. She died, and Wild had her decently interred at Pancras Churchyard. When his time came to die, it was by her side that he desired to rest. Betty was succeeded by Sarah Perrin, alias Graystone, by whom he had a daughter. Tiring of her, he took Judith Nunn, and scandal whispered that to obtain her he had brought about her husband's execution. She loved him dearly, and when he died she attempted her own life in order to join him. But Wild's amours are no part of his claim to fame.

He had perceived that the risk of receiving lay in the taking possession of the booty. But if a man never was in possession, then he would not receive. If, therefore, without handling it, he aided the despoiled owner to regain his property, there would be no capital offence. In fact, the very remote chance that an owner had of recovering anything made sufferers very willing to pay for regaining their goods. They would give more than a receiver. If Wild therefore could gain particulars of the theft and tell the owner where he could go and what he should pay, he ran only the risk of a common law misdemeanour, the owner regained his property, and the thief, enriched by the

serious blow at Wild's profession. He therefore took to thief-taking as his main occupation, and this change rendered implacable the hate his victims bore towards him. In all ages the thief-taker tends to become an agent-provocateur, a tendency now well known and guarded against. In those days, when the unauthorised adventurer could for reward range himself on the side of justice, these safeguards did not exist. Wild, therefore, still continued to plan thefts whereby the stock of thieves necessary for his trade as thief-taker would be kept up. His former safe methods of avoiding the law had ceased to avail him, and he was inevitably driven more and more to the cruder forms of receiving. His ship oftener made the voyage to Holland. He did not, however, entirely abandon the now fatal plan of recovering goods without apprehending the thief, though he professed to refuse to do so for reward. Roger Johnson, the skipper, got into trouble for smuggling, and in January, 1725, was in custody. Wild came to the rescue and organised a riot under cover of which Johnson was enabled to escape. This was the last straw. A warrant was issued against Wild, who had absconded, but on coming again into the open in the delusion that the storm had subsided, he was arrested on 15th February and lodged in Newgate, for the first and last time as a prisoner awaiting trial.

He was arrested for procuring the escape of a person accused of felony, but when the Old Bailey Sessions were opened further charges were made of organising a gang of felons returned from transportation and other highwaymen, burglars, shop-breakers, pickpockets, and of assisting them to dispose of their booty. The two indictments actually preferred at his trial on 15th May, 1725, were for stealing £40 worth of lace at the shop of Catherine Stetham on 22nd January, 1725, and for receiving on 10th March, 1725, a reward of ten guineas for helping her to recover the lace without apprehending the offenders.

Before his trial, Wild distributed among the jurymen and bystanders copies of a handbill claiming to have been instrumental in apprehending thirty-five highway robbers, twenty-two housebreakers, and ten felons returned from transportation. He added that the list was not complete, and that it did not include shop-lifters, pickpockets and like lesser offenders. For this reason, so the handbill concluded, some

who had escaped were in revenge endeavouring to have his life.

On the trial of the first indictment, Henry Kelly, the actual thief, told how Wild had met him at an alehouse and told him of the shop and took him and a woman named Mary Murphy there. While the woman haggled over a purchase, Kelly stole a box of lace. All the while Wild was waiting some yards away. They returned to Wild's house, and he offered them the choice of waiting till an advertisement came out or ready money. They elected for cash, and he gave them three guineas and four broad pieces.

Wild's counsel objected that the indictment charged stealing in the shop, but the evidence showed that he did not enter the shop. The Judge ruled that an accessory before the fact is a principal, and that a person who stands by to watch is as guilty as the actual thief, but added that there was some doubt and it was most eligible to incline to the side of mercy. It was a singular observation, since the evidence, if believed, established that Wild was an accessory before the fact, a principal in the second and a receiver.

On the second indictment Mrs. Stetham the prosecutrix, gave an account which will serve to illustrate Wild's methods. On the night of the theft she went as a matter of course to Wild's house, but he was out. She then advertised a reward of fifteen guineas and no questions asked. There was no result, and after a few days she called again and saw Wild. He got a description of the persons concerned and suggested a further call. On the next occasion Wild professed to have heard something of the lace and expected soon to hear more. As they were talking a man came in, and said that he had found out that the thief was one Kelly. On 15th February she again called and said she was willing to give twenty or even twenty-five guineas. Wild dissuaded her. The thieves, he said, had left town. He would set them quarrelling and she would then get the lace back cheaper. On 10th March, 1725, Wild sent to her from Newgate and told her to bring ten guineas with her. She went and saw Wild, who gave her a written direction. She could not read, and therefore gave this and the ten guineas to a ticket porter, who went away and returned with the lace, except one piece.

She asked Wild what he wanted. "Not a single farthing," he answered. "I don't do these things for worldly interest,

but for the benefit of those poor people who have met with misfortunes. . . . As you are a widow and a good Christian I desire nothing of you but your prayers, and for them I shall be thankful. I have many enemies, and God knows what may be the consequences of this imprisonment."

Seeing that all the while he had the lace and would gain the money paid, Wild must have been a practised hypocrite ; and his audacity may be measured by the fact that he committed this offence while actually in prison awaiting trial.

His counsel made an unavailing attempt to save him by arguing that the Act only applied to those who were not guilty of the felony, and therefore, as the evidence showed that he took part in the theft, Wild could not be convicted. This ingenious reversal of the argument in the former case was promptly overruled. The jury were left to consider their verdict on both charges. They remembered the Judge's hint and acquitted the prisoner of stealing, but convicted him on the second charge. He was therefore sentenced to death.

In the prison he declined to attend service, alleging his lameness and ill-health. He claimed to be a public benefactor in recovering stolen goods and procuring the arrest of felons, in which pursuit he had risked his life, often been beaten and had his skull fractured in two places. He insisted upon the other prisoners keeping order in prison, and before the day of execution received communion.

On the early morning of the appointed day Wild attempted to cheat the gallows by swallowing laudanum. But to make sure, he took so large a quantity that he vomited it up, and thereupon defeated his object. In a comatose condition he was supported to the cart which conveyed him to Tyburn. On the way the mob greeted him with yells of execration and showers of filth. By the time he reached the tree he was nearly recovered, but the hangman busied himself with the others so as to give him more time. The mob suspected the executioner of an improper motive, and called on him to do his duty, threatening, if he did not, to knock him on the head. Fearing for his own skin, he gave immediate attention to Wild, and in a few moments the cart was driven away, and the criminal's last moments were embittered by the cheers and yells of a hostile crowd.

Wild was beyond doubt a man of very great capacity, and with an honest disposition might have achieved a great

position. As it was, his very abilities rendered him the more dangerous to society, but his career leads to the reflection that a system which shut up a man merely for inability to pay his debts in a prison where he was forced to associate with the worst of criminals was well designed to pervert an abnormal man who had had no proper opportunity for the legitimate exercise of his undoubted talents.

He was not allowed long to remain by the side of his Betty ; A few days after his burial the grave was rifled and his body removed. For many years, indeed down to 1860, a skull and the remaining parts of a skeleton were on show, and the proprietor claimed that they were those of Wild. Now the remains have disappeared, and Wild's fame has been eclipsed by that of later but less able criminals.





**B**EFORE the Anatomy Act, 1832, both the student who aspired to be a surgeon and his preceptors were in a dilemma. It was necessary, before he could properly be qualified, that he should have a competent practical knowledge of human anatomy. To obtain that knowledge an adequate supply of bodies was essential. But it was not possible lawfully to acquire that adequate supply. It is true that from time to time the judges, when sentencing a criminal whose crime was more heinous or more brutal than usual, would add to the terrors of his last hours by directing that his body should be delivered to the surgeons for dissection. This was not a usual direction and could not in any case adequately supply the needs of students.

The law required that all bodies should receive Christian burial, so that, if the law were duly observed, schools of anatomy would operate only now and again according to the number of unusually atrocious criminals who were convicted of capital offences. There was and is no property in a corpse, but in every walk of life there are callous persons, and in this country among the lowest classes there was ample opportunity for unfeeling greed to make gain of death. A vagrant friendless stranger dying in a hovel would not be missed by anyone, and, if a surgeon would give money for the body, the dead man was no worse off and the exploiter reaped the benefit.

Owing to the separation of the profession into surgeons, physicians and apothecaries, not all medical students then needed instruction in anatomy, and it was a frequent practice to qualify abroad. It was probably for these reasons that the want of anatomical specimens does not appear to have been much felt until the end of the eighteenth century. The trouble, one may conjecture, became acute on greater care being taken to see that the intending surgeon was properly trained, and the large increase in the number of medical students during the early part of the nineteenth century only served to emphasise the inadequacy of the necessary supply of subjects. From

selling unclaimed bodies to hoodwinking the relatives of deceased persons was but a step, and there arose a new and ghoulish occupation—that of Resurrection Man—followed by individuals who marked down the graves of the recently buried and exhumed them before the process of decay had rendered the corpse useless to the anatomist.

The professor and his assistants, pressed by urgent need, shut their eyes to the provenance of their subjects. So long as there was no evidence of foul play and the body was sufficiently fresh, they paid and asked no questions. The price rose with the demand; from about £4, it became £8, £10, or even more. The culprit, once he had delivered his dreadful burden, was thus ensured a rich return and close silence. It was not always an outsider who procured this booty. Zealous assistants and students were known to take upon themselves this horrible business and dig up their own supplies.

A man who was so dead to humanity as to traffic in corpses and rifle graves was close to another and worse temptation. If a homeless wanderer when dead was worth money and while alive was naught but a nuisance, it might occur to such a man that, if the wail died before his time without undue marks of violence, business could be done. We do not know that in England anyone fell into that temptation. In Edinburgh, two men did, and their names have ever since been held in lasting detestation.

The Medical School at Edinburgh had always held a high reputation and attracted many students. During the third decade of the nineteenth century they numbered hundreds, all of whom had to follow a course in human anatomy—and the legal allowance was one criminal a year.

The most frequent demonstration in anatomy was that of Dr. Knox, a man of the highest skill on his special subject, but otherwise undesirable. He had been an Army surgeon. He was conceited and cocksure and entirely without regard to the feelings of others. And he was married to a woman of a much lower social standing than his own. But such was his reputation that he attracted most of the students, of whom 300 to 400 subscribed to his courses.

All the lecturers were well supplied with subjects, but none so well as Dr. Knox, who grudged no expense. Anyone who brought a body would receive from £6 to £10, and no



WILLIAM BURKE  
as he appeared at the Bar.



WILLIAM HARE  
from a sketch made in Court.



EDWARD HYDE LORD CORNBURY  
3rd Earl of Clarendon, and his wife, Catherine O'Brien Baroness Clifton  
(After a painting by Sir Peter Lely)

questions were allowed to disturb the bargaining. Some of his assistants and students are known to have joined in the practice of exhuming corpses, but this did not account for all the supplies. It was known to all who cared to traffic that he was the best market, and he benefited accordingly.

We may assume that, though relatives might object, the manifest needs of the medical schools kept public opinion from resenting and resisting such practices sufficiently to prevent them so long as they were limited to the supply of dead bodies. But public opinion was certainly not prepared to wink at murder, and when, in 1828, it became known that four persons had been arrested on a charge of committing murder in order to satisfy the needs of Dr. Knox, the town was at once in a ferment.

The four were Burke and Hare and their respective wives or paramours. Burke, the most active and intelligent, was an Irish labourer, aged thirty-six, who had come to Scotland, deserting his wife and family, some ten months before. He was a short, brisk man, strong and active, superficially merry, but at heart cold, cruel and grasping. He worked for a time as a navvy, and met Helen M'Dougal, a miserable, wretched woman, with whom he lived. By 1827 the pair were in Edinburgh earning a precarious living by buying old boots and reselling them.

William Hare was like Burke in race and age, but was taller and looked almost imbecile. He had also been a navvy, but in 1826 had taken up with an Irish widow, and the pair lived in Edinburgh in a wretched hovel, where they let beds to vagrants. It was a filthy, noisome den to which none but the lowest and most wretched had resort, and Hare and his mistress were in keeping with it.

On 29th November, 1827, an old Army pensioner died in Hare's dwelling. He owed Hare £4, and had not lived long enough to draw his quarterly pension. Naturally, seeing that he was a lodger at Hare's, he had no one to see to his funeral. Hare, fearing a loss, thought that he could recoup himself by selling the body. He needed help, and sounded Burke, who readily agreed to assist. The deal was effected and Hare recovered his bad debt. So far all was well. They had been welcomed at Dr. Knox's lecture rooms and had been invited to come again when they had another body. The business was good, but they had no body. Soon the idea came to them

that they could manufacture the necessary commodity, and this idea germinated.

On Monday, 3rd November, 1828, the newspapers contained paragraphs about the murder of an old woman whose body had been found and the arrest of the four persons accused of murdering her. There were hints of dark mysteries. Soon Edinburgh, and then the whole realm, was full of the discovery that the prisoners had followed the trade of murder for the purpose of supplying the anatomists. Dark hints were current that these scientists knew more than was healthy for them to know about the bodies brought to them for sale. All the four refused to admit any murder. The post-mortem examination was not quite conclusive. Though evidence was obtained that pointed to other murders, none of the bodies remained in existence. A month passed by and the Lord Advocate, convinced as he was that a brutal murder had been committed, was not convinced that he had available the necessary evidence to satisfy a jury. In these circumstances, it was inevitable that an attempt should be made to induce one at least of the accused to turn King's Evidence. M'Dougal remained dumb. Mrs. Hare was believed to be, and might well have been, Hare's wife, and so could not testify against him. As between Burke and Hare, the choice depended upon who was the principal offender. It was considered that Burke was the leader, and negotiations were opened with Hare. A promise of immunity at once secured his willing aid, and that of Mrs. Hare.

Accordingly, on Christmas Eve, 1828, the Court of Justiciary assembled to try Burke and his paramour M'Dougal. There were three charges: to the murder of the last victim, Mrs. Docherty, were added two more—of Mary Paterson, a young and beautiful prostitute, and of Daft Jamie, a well-known natural. In fact, the trial concerned only the first.

Everybody wished to be at the trial and elaborate arrangements were made to keep order. The police were reinforced and the military forces were kept under arms, ready to intervene at a moment's notice.

The Judges were the Lord Justice Clerk, accompanied by Lords Pitmilley, Meadowbank, and Mackenzie. The Lord Advocate led three juniors for the Crown. The Dean of Faculty led three more in the defence of Burke, and Henry Cockburn led yet another three for M'Dougal. Under the

arrangements in Scotland for the defence of prisoners, the brilliant advocates who defended the prisoners acted gratuitously.

The proceedings started with an objection to the indictment in that it charged Burke with three unconnected murders, and also that his fellow-prisoner was not charged as being concerned in two of them. The argument was lengthy and learned. The Judges held that the three charges would be joined in one indictment, but that the right course in the circumstances was to try each charge separately. Accordingly the Lord Advocate elected to proceed on the charge of murdering Mrs. Docherty in which both pannels were named. This election rendered it unnecessary to call Dr. Knox and his assistants, and proved to be a great disappointment. There were many things which called for an explanation, which, owing to the course of the trial, they were not required to give.

Both prisoners were then arraigned and pleaded not guilty, and the jury of fifteen were sworn.

The witnesses then gave evidence, the Scottish practice not admitting of opening speeches.

Mrs. Stewart proved that Mrs. Docherty came to seek her son, who had lodged with the witness. When she left on 31st October, 1828, she was well, and had been sober in her habits. Her name she apparently gave differently on different occasions.

William Noble proved that on the same day she was in a grocer's shop and met Burke there. Burke claimed to be a relation and took her away. Later in the day he came and bought a tea-box. The witness was shown the box in which the body was placed, but could only say that it resembled the original one.

In the evening Mrs. Connaway, who lived in the same building as Burke, saw the woman in Burke's rooms. She said that he had promised her a bed and supper, calling him Docherty, which was the name he had told her was his. There was a party at Connaway's, it being Hallowe'en, with Mr. and Mrs. Connaway, the Hares, Burke, M'Dougal and the woman. After it broke up, a disturbance in Burke's rooms, which sounded like fighting, annoyed the Connaways for a short time.

Next morning Mrs. Connaway went into the Burkes and



inquired about the woman. M'Dougal said that the woman and Burke had been "ower friendly together," so she had turned the woman out. Burke said that the woman had had a fit of "drink like," but she was quiet enough now. A witness, Alston, who also spoke of the disturbance, said that he heard a women crying murder, but not as if she was in personal danger. Just as he heard that there came a cry as if a person or animal were being stangled. In cross-examination he expanded the calling into "for God's sake get the police, there is murder here." This was important, as the only three women present were M'Dougal, Mrs. Hare, and the murdered woman. Most of these witnesses identified the body as that of the woman who had come to Burke's rooms.

The first really interesting witness was David Paterson, the keeper of Dr. Knox's museum, who was called up by Burke at midnight on the 31st October and went with him. Burke and Hare and their women were there. Burke, pointing to the straw on a bed in the corner, told him that there was something there for the doctor. Next day Burke and Hare with a porter brought a tea-chest, which was left at the museum, and then Dr. Knox gave Paterson £5, which he divided among the two. On the 2nd November the police came, and he handed over the box, which was opened and found to contain a woman's body doubled up. The witness judged that she had been suffocated or strangled. He knew Burke and Hare as men whom Dr. Knox had dealings with about bodies. The cross-examination was short, but the Lord Advocate appeared to be nervous about questions as to other transactions.

Then came another witness as to the events of the Friday night, chiefly important because he said that M'Dougal told him that the old woman had cried murder and had been turned out for an "old Irish limner."

Mrs. Gray and her husband, lodgers with the Burkes, had been turned out to make room for the woman, but were back on the Saturday. Mrs. Gray started to clean up, but Burke put a boy by the bed and told him to see that no one went near it. M'Dougal lay on the bed. At that time, unknown to Mrs. Gray, the body was lying on the bed under the straw. Burke went out and then the boy went. Mrs. Gray, who was suspicious, took the opportunity to investigate; and found the body lying naked on the bed. Both Mr. and Mrs. Gray

inspected the body. As they went out, they met M'Dougal, who offered them money to hold their tongues. In cross-examination Mrs. Gray added that M'Dougal said, "My God, I cannot help it!"

After the porter and a police officer had given evidence as to the packing and finding of the body, the way was made clear for William Hare. Lord Meadowbank warned him that if he told the truth he would be clear, but if he did not, then condign punishment would follow. The Lord Justice Clerk warned him to give evidence only as to Mrs. Docherty. He told the story in detail: how Burke had come and told him he had an "ould" woman at his house who would make a good "shot" for the doctors. After the party the Burkes and Hares and the old woman went into Burke's room, and Burke and Hare pretended to fight. The woman called out for the police, but M'Dougal pushed her back. In the struggle Hare manœuvred to knock the woman down. Burke then bestrode her as she lay and pressed her head down. She gave a cry and moaned. As soon as she screeched, the other women ran out. Then Burke put one hand under her chin and one over her nose. After that, seeing that she was dead, the two men stripped the body and hid it in the bed. Hare then said Paterson was fetched and told the rest of the story of disposing of the body. Mr. Cockburn cross-examined. No sooner had he asked about supplying bodies, than the Lord Advocate objected. The question was allowed, but only after discussion, and subject to a warning that the witness need not answer. And Hare took full advantage of that warning, as, indeed, he was fully entitled to do. He had to admit that he had denied knowing the dead woman.

The medical evidence as to the cause of death was called, and then Burke's first statement was read. In effect he said that Mrs. Docherty went away, but that afterwards a strange man brought a body and later came with a porter and took the body away, promising Burke two guineas for keeping the body. When it was put to him that the strange man was Hare he admitted it, but denied that the body was that of Mrs. Docherty. His second statement was to the effect that after the fighting Mrs. Docherty was missing, and on search was found in the bed, warm but dead, and appeared to have been vomiting. They discussed what they should do and decided to sell the body.

M'Dougal's statements denied all knowledge of the body and denied the conversation with the Grays. She insisted that she had turned the woman out.

This closed the case for the Crown, and, as no witnesses were called for the defence, the Lord Advocate addressed the jury at once. It was by this time late at night, the Court sitting to try the case out at one hearing according to the practice at that time. The Dean of Faculty followed for Burke. He endeavoured to explain that the evidence did not prove death by violence, and even then murder did not follow, as death by violence might be accidental, nor was it proved that Burke was the guilty party even assuming a murder. Mr. Cockburn rose at 5 a.m. He devoted his speech to the question of complicity. M'Dougal was not charged with taking part in the murder itself but with being accessory to the act. He laid great stress on the fact that the evidence for the prosecution negatives M'Dougal's taking part in the crime.

Finally the Lord Justice Clerk summed up.

At 8.30 a.m. the jury retired and at 9.20 they returned. The Chancellor (foreman) announced their verdict. They found Burke guilty (13 to 2), and in the case of M'Dougal they held the offence not proven. The Lord Justice Clerk expressed his concurrence, and after a discussion as to the sentence the Lord Justice Clerk pronounced sentence of death upon Burke and discharged M'Dougal.

Burke was hanged, and by the practice of the day his body served the same purpose as the bodies of his victims. The Professor of Surgery publicly lectured on his dissection of the body, and the skeleton is still preserved in the Anatomical Museum at Edinburgh. M'Dougal went back to her lair, but, being recognised, was only saved from lynching by taking refuge in prison. Everywhere she went she was discovered, and eventually found refuge in England. She is said to have died in Australia.

Hare and his wife were detained for some time while attempts were being made to bring him to trial, but eventually he was released. It was known that he was in danger from the population, and the authorities, by a series of stratagems, got him clear of Scotland, though he had many narrow escapes on the way. It is not known what became of him, but there is a persistent story, adopted by Serjeant Ballantine,

that, being recognised by fellow-workmen, he was thrown into a lime-kiln and lost his sight, and ended his life as a blind beggar in London.

Both Burke and Hare made confessions which agree in the main. It would seem that they worked at their horrible trade for ten months, and during that time disposed of at least sixteen bodies. Their most important murders were the other two charged in the indictment. Mary Paterson was a young woman of great beauty in face and form, well known to medical students. If the stories that were current are true, her body was recognised, and artists came to sketch it as it lay on Dr. Knox's tables. She was alive and well only a short time before, and her body showed no signs of disease. If that be so, Dr. Knox and many others wilfully shut their eyes to obvious murder. Daft Jamie was also a well-known character and could not be mistaken. His foot was deformed, and it was said that, when search was made for him, Dr. Knox had his body dissected out of turn, and his chief assistant took off the deformed foot by which the body would have been identified. Naturally, once a body had been dissected, identification became almost impossible.

Dr. Knox brazened it out, but he had lost caste ; gradually his classes diminished, and his efforts to obtain a professorship failed. At last he quitted Edinburgh. Eventually he drifted to London, and died at last as an obscure general practitioner. Although a committee, appointed by him and sitting in private, exonerated him from complicity, there is the gravest suspicion that he must have known that many of the bodies had been procured by foul means. It was hardly possible for a competent medical man not to have had at least serious doubts, sufficient to give him pause, and Dr. Knox's competence was far above the average.

This dreadful affair led to a change in the law. The Anatomy Act now regulates the supply of bodies to the medical schools, and care is taken that when they have served the uses of science these bodies are reverently buried.

It will be long before the memory of Burke and Hare will die out. Indeed, to the former it was given to supply the English language with a new verb, "to burke."



*Colonel Nicholas Bayard*



## COLONEL NICHOLAS BAYARD

**I**N 1701 New York was the latest conquest of British arms, the one bright achievement of the Dutch Wars of Charles II. When the Revolution came, the colony adhered to William and Mary, but not apparently because of Dutch affection for a sovereign of their own race. Queen Anne succeeded William without a ripple of disturbance, and in the local factions Dutch and English names are met with on both sides.

New York was a prosperous State, sharing a Governor with Massachusetts, then a province much larger than the present State, and having a Lieutenant-Governor, Council and Assembly. The burning questions were the French, the Indians, and the pirates. What with the Comte de Frontenac menacing the North and North-West and threatening to work round behind the province so as to cut it off from the interior ; the task of keeping the Indians quiet and preventing them from being cozened out of their lands ; and the accusations and counter-accusations of favouring pirates which the citizens of New York City bandied about, the office of Governor was no sinecure, even when his Assembly proved tractable.

The head of one party was Colonel Fletcher, late Lieutenant-Governor, and Lord Bellamont, the Governor, had broken with him. In consequence Fletcher's adherents were removed from the Council in 1698 when the conclusion of negotiations with de Frontenac gave Bellamont some leisure, and a new Assembly was chosen more to his liking. Colonel Bayard lost his seat on the Council, and was thenceforth reckoned with the opposition. In 1699 he lost more than a seat, for the Governor went into the question of the Indian lands and revoked several grants to settlers, including Bayard's patent for a very extensive tract of country. As the Assembly granted supplies for several years, the closing period of Bellamont's administration was comparatively calm. When he died, on 3th March, 1701, Nanfan, the Lieutenant-Governor, was away at Barbados, and until his return on 19th May the Council administered the Government of the Province.



When Nanfan took over the reins he does not seem to have considered himself a mere stop-gap until the King named another Governor. He formed a new Council, among whose members were Atwood, the Chief Justice, Colonel de Peyster, and Captain Walters, his puisne justices. In June the Assembly was dissolved and a new one summoned, the election causing lively disputes. The party opposed to Fletcher was in power and made use of its opportunities.

About this time the news came from England that William had named Lord Cornbury, the spendthrift heir of Lord Clarendon, to be the new Governor. He had sufficient trouble with his creditors to welcome the respite that the New World would give him. There he would find one party in power and the other seeking to gain his sympathies. Indeed, it was not intended that he should wait until he had landed before he found out what the position of local politics was. Colonel Bayard and some of his friends prepared three petitions or addresses, one to the King, one to Parliament, and one to the new Governor. They were engrossed, two of them in duplicate, and were open to be signed, first at Colonel Bayard's house, then at a coffee-house, and finally at Mr. Alderman Hutchins' inn. The Alderman also held the rank of captain.

What was in these petitions was not disclosed, but it was known that they complained of the appointments made by Lord Bellamont and reflected upon the honesty of the Lieutenant-Governor and the Chief Justice. The Council were very anxious to seize these documents. On 16th January, 1702, they ordered Hutchins to deliver them up, and three days later committed him to prison for refusing to hand them over. The committal was not over-reasonable, because he had returned them to Bayard, but the Council assigned as the reason for his incarceration that he had signed libels against the Government.

Events then moved very rapidly. Colonel Bayard, Mr. Rip van Dam and two others came on 20th January and personally delivered to the Council an address praying for the release or at least bailing of Hutchins. In the course of this address they mentioned Lord Cornbury, "whom we understand by certain advices we have received from England to be nominated by His Majesty to succeed the late Earl of Bellamont as our Governor." The purport of the request was that Hutchins should be released, because Bayard and his

friends were responsible for the addresses and were prepared to support their lawfulness.

On being asked, they admitted that they had the documents and were ordered to return on the next day.

The delay was really due to a desire to obtain advice. The Attorney-General, Broughton, was consulted, and he advised in plain terms that no breach of the law had been committed.

This opinion did not deter the Council. Were there not three judges among the members? Someone recalled an Act of Assembly of 1691 recognising William and Mary as the lawful Sovereigns of the Province. The statute concluded with a provision that persons who should endeavour by force of arms or otherwise "to disturb the peace, good and quiet of their Majesties' Government as now established" should be deemed to be rebels and traitors to their Majesties and be liable to the penalties provided for such offences by the laws of England.

The Council were quite sure that this statute applied. The Lieutenant-Governor and Council were the Government, and this was a project to oust them. Moreover, the soldiers stationed at New York had been asked to sign. And, indeed, Colonel Bayard's address to the Council was itself treason within this statute, so the Council thought. It said that Lord Cornbury had been appointed to succeed Lord Bellamont. This was tantamount to saying that the present regime was unlawful and thus denying its authority. This sounds far-fetched, but perhaps was not quite so absurd then, when many remembered that on the Restoration Charles II dated his reign from his father's death in order to assert that the Commonwealth had no lawful power or authority. The Council's view, however, is just the same as if, on a colonel's death, a soldier in the battalion should be accused of denying that the second in command had any right to command it merely because he discussed who would be appointed to succeed his dead colonel.

Colonel Bayard was arrested and sent to join Hutchins in the common gaol. The City Militia were called to arms, and a company told off each day to guard the prison. This duty, especially as defaulters were punished severely, caused great discontent, and eventually the Council deemed it wiser to dismiss the Militia to their homes.

On February 12th, 1702, a special commission was issued

to Chief Justice Atwood and to de Peyster and Walters, the puisne judges, to try these charges of treason.

The report is frankly pro-Bayard, and therefore does not necessarily do adequate justice to the prosecution. It does, however, seem high-handed to charge as treason what at worst seems only to have been sedition or libel, and to push on a trial which might have been left until Lord Cornbury could review the circumstances impartially.

On 19th February, 1702, the Court began its sittings. Twenty-four men, mostly of Dutch origin, to judge by their names, had been summoned as Grand Jurors, and twenty-two of them attended. The foreman was Johan de Peyster. Trouble began at once. Objection was taken that several of the Grand Jury had openly declared themselves hostile to Bayard, and evidence was offered in proof of this. Atwood, who throughout took the leading part, overruled the objection, and the Grand Jury were charged. The indictment charged treason under the Act of 1691, but Atwood, in addressing the Grand Jury, told them that it was also treason by the common law of England.

Next day, when the Grand Jury were about to retire to consider the Bill, Weaver, the Solicitor-General, proposed to attend their deliberations. Four jurors objected, and the Grand Jury broke up in disorder. The Court sat again in the afternoon, when Weaver made a formal complaint about the behaviour of the four, who were promptly discharged for misconduct. The Grand Jury, thus diminished, but with the addition of one of the two who had originally made default, again retired, but their deliberations were prolonged in spite of furious messages from Atwood.

On 21st February the Grand Jury were brought into Court and the foreman handed over the bill marked "Vera Billa" (True Bill) and signed by him. The Grand Jury were at once discharged. The Chief Justice must have known that trouble was brewing, and thus prevented any protest. Bayard's counsel at once objected. Twelve jurors had not agreed to find a true bill, and eight of the nineteen, who had remained in Court, agreed that this was so. But Atwood ruled that there could be no averment against a record. Later he said that the jurors should have objected at the time, but he had given them very little opportunity. The objection being overruled, the Court adjourned.

On 2nd March Mr. Nichol and Mr. Emot, who had been assigned as counsel for the defence, moved to quash the indictment, both on the ground that twelve had not agreed to find a true bill and also because the Grand Jurors had not been summoned by virtue of precepts under the hands and seals of the Commissioners. These objections were overruled.

The indictment was then read. It charged Bayard with a design to procure mutiny and desertion and the signing of false and scandalous libels reflecting upon the administration and asserting that the subjects were oppressed, that the Government was rendered cheap and vile, that the Assembly was not lawful, and thereby inciting the people to disown the Government and to cast off their obedience. The prisoner pleaded not guilty, and the trial was fixed for 6th March. The Attorney-General was directed by the Council to conduct the prosecution.

When 6th March came most of the time was occupied in wrangles over the petty jury. Eighty men had been summoned, but many made default and were fined £10 each. At last twelve were sworn, but the prosecution was not ready. An application for an adjournment was granted, "the King's evidence being disguised with drink." It was a Friday, and the defence suggested Monday. No, said Atwood. He was not going to give Mr. Veasy (the Minister of Trinity Church, New York) another opportunity to preach.

Accordingly the trial began on Saturday, 7th March. The Chief Justice inquired where was the Attorney-General, but that officer was not present. Atwood commanded that this neglect of His Majesty's service should be noted. It was no wonder that the Government was condemned when the Attorney-General behaved like this. There is a note that, of the twelve jurors, one was an alien, two were not freeholders, and the rest all Dutch or of Dutch extraction of no standing, some of them ignorant of the English language.

The Solicitor-General then opened in the style beloved of Jeffreys. Bayard, he said, was a malignant, the head of a faction, endeavouring to introduce Popery and slavery and making the place a nest of pirates.

Then came the evidence. The witnesses who were called spoke of three places : some signed at Colonel Bayard's house, some at a coffee-house, and some at Mr. Alderman Hutchins' tavern. The Solicitor-General found the memories of these

witnesses as to the contents of the addresses extremely bad, and again and again referred to what they had said when examined before the Council. Hardly any witness could be got to say that the contents resembled the allegations set out in the indictment. The soldiers who were called all denied that Bayard was present. The only witnesses who did speak of him were those who saw him at the signing at the Colonel's own house, and they added that no pressure was put upon them to sign.

After the witnesses the petition to the Council about Hutchins was read, but the prosecution had been unable to get hold of the addresses or any copies. Then came a peculiar incident. The Solicitor-General asked that Mr. Emot, the junior for the defence, should be sworn, and then asked him if he had advised anyone about the petition to the Council. So he had, but not Bayard. He had been asked whether there was any objection to the wording of the petition, and had said that the words about Lord Cornbury succeeding Lord Bellamont might be seized upon by anyone who wanted to put a strained meaning on them. He apparently did not raise the question of privilege. As Colonel Bayard was not proved to have asked for the advice, the evidence seems to have been quite inadmissible.

Then counsel for the defence raised the legal points. Mr. Nichol pointed out that there was a legal right to petition, and that there was a statute making colonial governors responsible for their misdeeds. The prosecution, he said, made complaint of high treason, and deprived the subject of his right to petition.

Mr. Emot discussed the law of treason in order to show that by no statute could the facts deposed to amount to treason. After the arguments came evidence as to the prisoner's character. Among the witnesses was the Rev. Mr. Veasy. A witness who was put forward was not allowed to give evidence because he had signed the petitions.

The Solicitor-General in his final speech limited himself to the issues of fact, not attempting to controvert the legal arguments. After the Chief Justice had summed up, the jury retired, but by the end of the day had not agreed.

On Monday, 9th March, the jury were brought into Court and asked for directions. Goelet, the foreman, read some notes of the evidence which Bayard protested were inaccurate.

The Chief Justice declined to intervene after the jury were given in charge. He added that he had given the jury private answers as to the law. As to the facts, if there were any doubt that they amounted in law to the offence charged, then the jury could convict, so that the prisoner might raise the legal point on a motion in arrest of judgment. This brought Mr. Emot up with a vigorous protest. The Chief Justice proceeded to address the jury at some length, during which Mr. Emot made continual efforts to intervene. At last he was allowed his say, and, it proving to be concerned with the merits of the position, he was ordered to be silent. Mr. Nichol then tried to help, and Colonel Bayard, pointing out that the other two commissioners had hitherto been silent, asked that they should give their opinions also. No notice was taken of the request.

At last the jury returned with a verdict of Guilty.

On 10th March a motion in arrest of judgment was made on the grounds that no overt act had been proved by the oath of two lawful witnesses, and, further, that the facts proved did not amount to treason. When counsel had argued these points, the Chief Justice said that he could answer them offhand, but there would be an adjournment to enable the Solicitor-General to consider the points.

On 11th March Mr. Nichol argued that there was no overt act. The Chief Justice remarked that the jury were the sole judges of the evidence, and if there were any omission it was cured by the verdict. Naturally, Mr. Emot reminded him that he had, in the hearing of the jury, suggested a verdict of guilty, leaving the point of law to be argued, and he went on to submit that there was no treason. Finally he objected on the ground that two of the jury were aliens, and took two technical objections on the form of procedure. We are not told what the Solicitor-General's argument was, if he did argue, but the Chief Justice overruled all the objections, and the case was adjourned for sentence, after the prisoner had denied any disaffection or treason.

Next day Colonel Bayard wrote to de Peyster, the second Commissioner, accusing him of bringing about his destruction. When interrogated, he said that he had not taken his counsel's advice about writing.

The argument was by no means over. On 13th March, Mr. Nichol being ill, Mr. Emot argued (1) that twelve of the

Grand Jury had not concurred in finding a true bill ; (2) that several of the petty jury did not understand English ; (3) that the evidence disclosed no treason. He offered evidence of alienage, but this was rightly rejected on the ground that objection should have been taken when the jurors were sworn. The Chief Justice having once more overruled these objections, Mr. Emot brought down the wrath of the Chief Justice upon him by asking that the other two Commissioners should express their opinions " so that we may know by what hands we fall."

However, Atwood consulted privately with the other two, and then announced that they all agreed.

The Chief Justice expressed his regret that Colonel Bayard remained impenitent and passed the usual sentence of death. Colonel Bayard asked if he might answer the Chief Justice's remarks, but was told that he might not, and was removed.

The Commission then proceeded to try Alderman Hutchins, and after a similar trial he, too, was found guilty and sentenced to death.

After some difficulty both men obtained respites, but though Hutchins was admitted to bail, Bayard was confined in prison until Lord Cornbury arrived.

The new Governor was not anxious to take sides immediately on his arrival. He did consent to a statute being passed reversing the convictions and procured Queen Anne's confirmation of that statute, but he made it a condition before doing so that the two men should give security not to take proceedings against any who had taken part in their prosecution.

Soon after this, Lord Cornbury espoused the cause of the opposition, and Chief Justice Atwood and Weaver, the Solicitor-General, retired. They soon found it convenient to remove to Virginia, whence they sailed for England.

Colonel Bayard remained in possession of the field.

*William Cobbett*





## WILLIAM COBBETT

ON 15th June, 1810, William Cobbett was brought before Lord Ellenborough, at Westminster Hall, on a charge of publishing a libel in his paper, *Cobbett's Political Register*. The alleged libel lay in a passage commenting upon the flogging of English Militiamen at Ely by German troops in the previous year.

To understand the sensation created by the trial—and, perhaps, the severity of the sentence—it is necessary to trace the career of William Cobbett up to this time. He was one of the most remarkable Englishmen of his day—one who, by his very individuality, was typical of his race. He was born near Farnham, in Surrey, on 19th March, 1763, the son of a small farmer, who also kept an inn, "The Jolly Farmer." It is not unrevealing of the status of his family that Cobbett never properly knew the year of his birth, and usually post-dated it by three years.

His father was a man of character and industry. The son of a farm labourer, he himself had driven the plough as a boy for twopence a day, but he had a desire to improve himself, and collected the rudiments of education. William was the third of his four sons, and, like them, took his turn at scaring rooks, weeding wheat, hoeing peas, and guiding the plough. From his father he learned to read and write. When he was fourteen he was engaged in the garden of the Bishop of Winchester at Farnham Castle. Hearing there of the beauties of the Royal Gardens at Kew, he trudged off to Richmond and obtained work in the Gardens, where his odd dress, while he was sweeping the grass beside the Pagoda, attracted the amused interest of another youth, who afterwards became King George IV. On his way to the Gardens Cobbett went without supper to buy a second-hand copy of Swift's *Tale of a Tub*, a book which accompanied him for many years on his travels.

After a time he returned to his father's farm, but, still ambitious, decided to enlist for a sailor. The captain of the

vessel on which he sought employment misunderstood his motive, and told him that it was better to be "led to church in a halter" than run away to sea. After another six months on his father's farm, however, he made his way to London, where a stranger employed him for a few months as a clerk in an office in Gray's Inn. This sedentary life did not satisfy the country lad, and he went to Chatham to enlist in the Marines. By some error he found himself a private in a line regiment; for a year he remained at Chatham, and then spent six years in the garrison in New Brunswick.

Within a year of crossing the Atlantic he became the regimental sergeant-major; he learned a primer of English grammar by heart, and soon took over the writing of all the adjutant's orders and despatches. Typical is Cobbett's own account of their relations: "He made me *write*, while he pretended to *dictate*! Imagine to yourself me sitting, pen in hand, to put upon paper the precious offspring of the mind of this stupid curmudgeon! But, here, a greater difficulty than any former arose. He that could not *write* good grammar, could not, of course, *dictate* good grammar. Out would come some gross error, such as I was ashamed to see in my handwriting. I would stop, suggest another arrangement; but this I was, at first, obliged to do in a very indirect and delicate manner. I dared not let him perceive that I saw, or suspected his ignorance; and, though we made sad work of it, we got along without any very sanguinary assaults upon mere grammar. But this course could not continue long; and he put an end to it in this way: he used to tell me *his story*, and leave me to put it upon paper, and thus we continued to the end of our connection."

These words, and this episode, are typical of Cobbett's attitude throughout his life, with the only difference that, after he left the Army in 1791, at the age of twenty-eight, he no longer troubled to hide his contempt for officialdom.

He recommenced civilian life by an attempt to expose corruption in the Army. There can be little doubt but that he was right in asserting that not merely the quartermaster, but other officers too, contrived to steal a considerable portion of the men's pay and allowances. He prepared his charges and forwarded them to the Secretary for War, whom also he interviewed. Eventually a court-martial was granted, but in the meantime his witnesses were tampered with, and so he

alleged, former comrades were suborned to accuse him of disloyalty and insubordination. Realising that his attempt to destroy the corruption which permeated the whole Army could not succeed, he did not appear at the court-martial. In his absence the prisoners were discharged, and Cobbett had lost the first round of his fight with authority.

He had just married. On his arrival in New Brunswick, six years before, he saw the daughter of a sergeant-major in the Artillery, a thirteen-year-old girl, scrubbing a wash-tub in the snow. Struck by her beauty and her industry, he said to his companion: "That's the girl for me," and immediately obtained her parents' consent to an engagement. The girl went back to England, where Cobbett sent her a hundred and fifty guineas, which he had saved out of his pay, asking her to keep them for him until his return or, if she were in difficulties, to apply them to her own comfort. When at length he came back to England, he found the girl a maid-of-all-work in an officer's household at the miserable wage of two shillings a week. "Without hardly saying a word about the matter, she put into my hands *the whole of my hundred and fifty guineas unbroken!*" They were married two months later, and Cobbett never had reason to regret his choice.

After the failure of the court-martial he thought it wise to visit France, where he taught himself the language, and the United States, where he stayed for seven years. During this time he taught English to French emigrants, among them Talleyrand, whom he suspected, probably correctly, of wishing to employ him as a spy. For the young Englishman was making his mark as a pamphleteer under the pseudonym of "Peter Porcupine." With an instinct for championing unpopular causes, he made it his business to defend his country against the attacks made upon her by American and English Radicals. The success of his pamphlets and an inevitable quarrel with his publishers made him open his own book-shop in Philadelphia. It is typical of him that a large portrait of George III was the principal ornament of the window. After three trials for libels, he returned to England in 1800, a ruined man, and found himself the hero of his countrymen.

The Government offered him a share in one of its newspapers, but Cobbett refused the reward, which he regarded rather as a bribe. Ardent Tory though he was, he hated to find himself in unison with authority, and soon his views took

on a Radical tinge. His opposition to the Peace of Amiens made him refuse to illuminate his house, and the mob broke his windows and smashed the door, damaging also his publishing office.

Slowly he evolved into a complete Radical. His weekly paper, the *Political Register*, mirrored his moods and views, denounced corruption, opposed the Peace, supported bull-baiting, defended the slave trade.

Characteristically, he left the business side of his paper to his partner, a man as unpractical as himself, and devoted his leisure to farming a piece of land at Botley, in Hampshire.

A wild antipathy to Pitt coloured all his writing. Even the statesman's death did not end his attacks. He declared that it was regarded by the people of England (i.e., Cobbett) as "the first dawn of their deliverance from an accumulation of danger and disgrace." He insisted that, since the dead man's memory was used as political ammunition by his supporters, it was necessary to continue attacking him; if the truth were not told about the dead, "away goes at one sweep all historical truth, and, with it, all the advantages therefrom derived, whether in politics or morals."

He threw himself into politics, enlivened several elections by his denunciations of Government jobbery and pensions, denounced the National Debt, assisted in the disgrace of the Duke of York, the Commander-in-Chief, and eventually made himself one of the men most disliked by the Government in the whole country. There can be no doubt that the Tories were eager to find a means of suppressing him.

Their chance came at last when he published an article in the summer of 1809 about the flogging of certain recalcitrant Militiamen at Ely by German cavalry in the British service. The Attorney-General immediately threatened prosecution; Cobbett set the affairs of his farm in order and prepared to fight the case. But for once his determination weakened, and he parleyed with an agent of the Government, who suggested that the charge might be withdrawn if Cobbett recanted. Obstinacy and, doubtless, fear of bad faith on the part of the Government, finally determined him to face his accusers, and in June, 1810, a year after the offence, he was brought to trial.

The jury was empanelled, Cobbett objecting to one of them as a foreigner. When the man protested that he was

British born, Cobbett apologised, and the case proceeded. The Attorney-General opened for the Crown. In 1798, he explained, Lord Castlereagh had brought in a bill by which the Militia might be called out for twenty-eight days in any year, instead of twenty days, as previously. When the Cambridgeshire Militia was called out in 1809, some of them mutinied, and it was necessary to summon the military to check them. Five of the ringleaders were sentenced to five hundred lashes. The soldiers who were summoned were of the German Legion, Hanoverian troops in the British service, brave, orderly, sober men, said the Attorney-General, who had fought with distinction at Talavera.

He then read Cobbett's comment :

#### "LOCAL MILITIA AND GERMAN LEGION

" See the motto, English reader ! See the motto, and then do pray recollect all that has been said, about the way in which Buona-parté raises his soldiers. Well done, Lord Castlereagh ! This is just what it was thought your plan would produce. Well said, Mr. Huskisson ! It really was not without reason that you dwelt, with so much earnestness, upon the great utility of the foreign troops, whom Mr. Wardle appeared to think of no utility at all. Poor gentleman ! he little imagined how a great genius might find useful employment for such troops. He little imagined that they might be made the means of compelling Englishmen to submit to that sort of *discipline*, which is so conducive to the producing in them a disposition to defend the country, at the risk of their lives. Let Mr. Wardle look at my motto, and then say, whether the German soldiers are of *no use*.—*Five hundred lashes each !*—aye, that is right ! Flog them ; flog them ; flog them ! They deserve it, and a great deal more. They deserve a flogging at every meal time. ' Lash them daily, lash them daily.' What, shall the rascals dare to *mutiny*, and that, too, when the German Legion is so near at hand ! Lash them, lash them, lash them ! They deserve it. O, yes ; they merit a double-tailed cat. Base dogs ! What, mutiny for the sake of *the price of a knapsack* ! Lash them ! Flog them ! Base rascals ! Mutiny for the price of a goat's skin ; and, then, upon the appearance of the *German soldiers*, they take a flogging as quietly as so many trunks of trees ! I do not know what sort of a place Ely is, but I really should like to know how the inhabitants looked one another in the face, while this scene was exhibiting in their town. I should like to have been able to see their faces, and to hear their observations to each other, at the time. This occurrence at home will, one would hope, teach *the loyal* a little caution in speaking of ~~the means~~ which Napoleon employs (or, rather, which they say he

employs) in order to get together and to discipline his conscripts. There is scarcely one of these loyal persons, who has not, at various times, cited the *handcuffings*, and other means of *force*, said to be used in drawing out the young men of France; there is scarcely one of the loyal, who has not cited these means as a proof, a complete proof, that the people of France *bate Napoleon and his government, assist with reluctance in his wars, and would fain see another revolution.* I hope, I say, that the loyal will, hereafter, be more cautious in drawing such conclusions, now that they see, that our 'gallant defenders' not only require physical restraint, in certain cases, but even a little blood drawn from their backs, and that, too, with the aid and assistance of German troops. Yes, I hope the loyal will be a little more upon their guard, in drawing conclusions against Napoleon's popularity. At any rate, every time they do, in future, burst out in execration against the French, for suffering themselves to be 'chained together, and forced, at the point of the bayonet, to do military duty,' I shall just republish the passage which I have taken for a motto to the present sheet. I have heard of some other pretty little things of the sort; but, I rather choose to take my instance (and a very complete one it is) from a public print, notoriously under the sway of the ministry."

The "passage" was an official account of the mutiny and its suppression.

Cobbett's friends had begged him to be represented by counsel, but he chose to address the Court in his own defence. He put up a poor show. He was out of his element; effective though he was as a speaker at the hustings, his downright self-confidence and extravagant assertions were unlikely to impress a jury alarmed by Radical disturbances throughout the country. From the statements of eye-witnesses it is clear that his speech was too long and badly delivered.

He began by declaring that no man had ever been so calumniated as himself, and that His Majesty's Ministers were implicated in the attacks upon him. He referred to former trials, both in England and America, in which he had figured as defendant, and suggested that he was the victim of a conspiracy. Then he denied that there was anything in his article reflecting upon the King.

"Why, by and by, if a Minister is pelted in the streets with mud, we shall be told that the mud was thrown at the King, and not at the Minister!"

The whole object of his article, he said, was to ridicule Lord Castlereagh's Bill. "Are we never to complain of

soldiers being ill-treated? If we see a soldier flogged to death, is no tongue, no pen, to move in his defence? My object was to cause the folly of Lord Castlereagh's measure to be done away with. A young fellow with a smock frock, sentenced to five hundred lashes for mutiny—but this was not a mutiny; it was a squabble about a marching guinea. I told Lord Castlereagh that by his measure he had just made these men soldiers enough to dislike labour, and yet not soldiers enough to cease to be labourers."

He would read, he said, what Lord Grenville had said in Parliament. Lord Ellenborough, the Judge, interposed with the observation that speeches in Parliament were privileged, and could not be quoted. Cobbett, however, recited the words of another Member, and was again stopped.

By this time he seems to have lost his temper and, with it, the thread of his carefully prepared defence.

He complained bitterly that foreigners had been brought in to chastise English Militiamen, and quoted protests in Parliament against the use of German soldiers by Charles I and William III. At the present time, he said, there were no fewer than five German generals in the British Army; nineteen colonels and thirty-four thousand foreign troops. There was even a French officer on the staff in Sussex, and two other Frenchmen at a dockyard in Wales. "Why have these men been brought to superintend the lashing the backs of my countrymen?"

As for the Attorney-General's statement that the German Legion had behaved bravely at Talavera, this was directly contrary to the truth; the cowardice of the Germans had exposed English regiments to disaster, from which only the bravery of the 29th Division had saved them. What was more, these Germans had behaved with unparalleled licence when they were quartered in England. Some of them, for example, had drawn their swords in the most ferocious manner on a landlord in the Isle of Wight who refused to serve them with liquor.

Finally, Cobbett denied that he had any motive in wishing to subvert the Government. "Every advantage I possess is prospective—all my prospects, my property, my publication, even the very trees I have planted, depend on the continuance of His Majesty's Government; it is impossible, therefore, that any man can impute to me an intention so stupid, so



absurd, so senseless, as to wish for the overthrow of the Government under which I live."

The Attorney-General replied. In a speech hardly less extravagant than Cobbett's, he again accused the latter of desiring to create general discontent in the country. One of Cobbett's motives, he argued, was to reproach and taunt the Cambridgeshire Militia with having submitted to be flogged. It was vain for him to suggest that what was in fact a most dangerous mutiny was merely a little disorderly conduct. Moreover, "the question before the Court and jury is not the merits or demerits of the German Legion. The question for the jury to decide is whether the mischievous paper which has been read had it not in view to hold up those brave men to obloquy and contempt, and to excite in the minds of the military disobedience and resistance, and in those of the people at large of this country a disposition to discontent and disaffection."

Lord Ellenborough summed up. He told the jury that, if the publication imported mischief, they were bound in law to conceive that mischief was intended. If anything was wanted to show Cobbett's real meaning, it was necessary only to refer to his own statement, towards the close of his evidence: "I should not have said so much of these Germans if they had not been brought into this country to flog the backs of my own countrymen." But there could be no question of the defendant's purpose being ambiguous. His meaning was clearly that, if the Militiamen, with arms in their hands with which they could resist, endured punishment, they richly deserved whatever punishment they received.

As for Cobbett's address to the inhabitants of Ely, what else could it mean, asked the Judge, but a reproach to them for having passively witnessed the floggings? Did not the whole article betray a bad moral and political feeling? Was not its evident purpose to excite the soldiery against each other, and to excite the people against the whole Government and Constitution under whose laws the flogging had been inflicted?

"According to law," Lord Ellenborough concluded, "it is my duty to state to you my opinion upon any case submitted for your consideration. When I have doubts, I never decline to communicate those doubts, and when I differ in opinion from the prosecution, I have not hesitated to state that

difference. But, upon this occasion, I must say that I feel no such doubt or difference, it being the confident certainty and full conviction of my mind that this is a most seditious libel."

The jury consulted for only two minutes before returning a verdict of Guilty.

A fortnight later Cobbett was brought up for sentence before Mr. Justice Grose, who declared that he had never known a publication more nearly allied to high treason; its consequence could not be contemplated without horror. Considering, therefore, the mischievous nature of the libel, the result it was likely to have, and the time at which it was published, the sentence of the Court upon William Cobbett would be :

"That he do pay to the King a fine of £1,000; be imprisoned in the gaol of Newgate for the space of two years; that he do then enter into recognisances to keep the peace for seven years, himself in £3,000 and two sureties in £1,000 each, and that he be further imprisoned till such fine be paid and sureties found."

Cobbett went to Newgate, where, the chief gaoler being one of his supporters, he was well treated and was able to publish his paper twice instead of once a week. His friends came forward with the money for his fine and the recognisances, and, on his release, which was celebrated by a great public dinner, his reputation and influence stood higher than ever before.



# *The Marquise de Brinvilliers*



## THE MARQUISE DE BRINVILLIERS

MARIE MARGUERITE D'AUBRAY, Marquise de Brinvilliers, infamous as a criminal, famous as a victim, was born in 1634, so that three hundred years have passed since her name became known to history. This lapse of time increases alike the fascination of a mysterious theme and the difficulty of dealing with it, for remote villainy is difficult to track down in the face of many accretions of the legendary and fictitious. Where the craft of the poisoner is concerned, historian, advocate, judge and psychologist must all tread warily. From all these points of view, the adventures of the beautiful Marie d'Aubray, Madame de Brinvilliers, constitute a leading case.

By his marriage, Antoine Gobelin—Marquis de Brinvilliers, Baron de Nourar—brought the family of d'Aubray no special advantage. The bride's lineage was higher than his own. The fortune of the Gobelins was really Flemish, and was derived from homely but widespread industrial success. They were sleeping partners in a famous business, and they were rising in a social world which the d'Aubray family had for generations adorned. Marie de Brinvilliers was a bride at seventeen. King Louis the Fourteenth, who always paid special attention to pretty women, was at this time a boy of thirteen, but by the time he was three-and-twenty, the Marquise, at twenty-seven, was beginning to attract the notice of many, and the observant monarch, not indeed so much as a man, but as the guardian of his subjects, soon found reason for making her the object of his more particular inquiries. Nothing happened suddenly. It would seem that for the first years of their married life the Marquis and the Marquise lived together in the mode suited to their station and brought up their five children tenderly. As happens in many dramas, a spell of calm came before the time of storm.

The age was extravagant. If you lived in touch with the Court, you had to live well. The d'Aubray family were accustomed to living handsomely.

The father of Marie, the Seigneur Dreux d'Aubray, held lucrative public appointments and wielded much influence. His estates were valuable and he had two sons to succeed him. His death in 1667, after a lingering illness, was the first of the mysterious deaths to become the cause of a general panic on the part of many who had enemies to propitiate or property to lose. If his death had been the only one to be accounted for, the long-drawn trial which we are about to consider would never have taken place. But in some ways the death of Dreux d'Aubray held the field of speculation last as first. He is the uneasiest shadow in our story. He is like the Ghost in *Hamlet*. There are times when he seems to be more real than Antoine de Brinvilliers himself. This man, the husband of Marie, was of another type altogether. All accounts show, in contrast to his father-in-law's respectability, the thorough-going *roué*, who came by degrees to allow his wife the same licence that he took himself with this mistress or that. If Monsieur d'Aubray thus overshadowed the Marquis in one respect, one, at least, of the lovers with whom Madame consoled herself overshadowed him in another. This was his friend and boon companion, Gaudin Sainte-Croix. He is no ghost, but the substantial villain of the piece, which lacks nothing in the attributes of sombre romance.

The antecedents of Gaudin Sainte-Croix are of no great importance, but he may well have been a bastard offshoot of some noble family. He had all the charm and swagger of the traditional Gascon, and by reason of his friendship with the Marquis, attained to a peculiar knowledge of the difficulties in which their reckless expenditure was involving them. Having gained influence over Madame, he proceeded to persuade her to embark on a scheme whereby her property would be separated from that of her husband. This brought upon him the wrath of her own family. Scandal was rife. The King was appealed to in his tutelary capacity. The State and the King and the rights of family property were traditionally one. Sainte-Croix, under the privileged usage of a *lettre-de-cachet*, was arrested and thrown into the Bastille. The process was disciplinary rather than punitive, a measure of precaution. The arrest took place in March, 1663. Madame de Brinvilliers was now in her twenty-ninth year. The real adventure of her life had now begun, and for the rest of her life

years the adventure was destined to continue, with disastrous consequence to many, as well as to herself.

It seems certain that the episode of his imprisonment, short though it was, rankled with Sainte-Croix, who used the time to meditate plans of revenge, but plans, also, of advantage to himself, through Madame, with whom he resumed his *liaison* as soon as the six weeks' detention was over. Imagination—the sense of probability, rather—may dwell on these two personalities with profit for a moment. Marie de Brinvilliers was very much a man's woman, a pretty doll, blue-eyed, dainty, sufficiently subtle in mind to ensnare a man whilst allowing him to believe that he controlled her. Sainte-Croix had a game to play, a dangerous game, with plenty of fun attached to it, in a household divided against itself. He had no moral scruples, no particular respect for human life as such. His imprisonment had brought him into touch with a number of capable ruffians. Among these was a strange individual afterwards known as Exili, believed by the police of several countries to be an expert poisoner.

We may adopt the name by which he was so appropriately known. His true name was probably Eggidi. He appears to have been alternately under the protection of Queen Christina of Sweden and of the Papal Court at Rome. In spite of his vile reputation and even of his capture, he also was soon released. But his influence remained with Sainte-Croix. This latter, on obtaining his own freedom, struck up an acquaintance with a man of yet another type, but not less skilled than Exili in scientific experiments involving danger to human life.

This man, Christopher Glaser, had real repute among chemists. His discovery of sulphate of potassium stands to his credit still. Some of his books are treatises that involved deep research and are proofs of a versatile, ingenious mind. He was an expert botanist, and he held an important official appointment in Paris. He even became scientific adviser to the King, as pharmacist in control of medical supplies to the royal household. The connection of Sainte-Croix with Glaser and with Madame was proved later on. If Exili passes out of sight obscurely, his connection also with the former prisoner of the Bastille, Sainte-Croix, must be remembered.

It was the age of the poisoner. If you were prominent, you took precautions against poison more persistently than against other dangers. The ways of poison-craftsmen were



subtle. Against these, protection was only devised in fumbling fashion. But some simple antidotes were in common usage. Not only were poisoners subtle. They were slow. This fact is very important. For justice was slow, also. "You are decidedly confused about dates," said an examining magistrate to the most important of all the witnesses at the actual trial, which took place in 1676.

We must not ourselves be so confused. Certain facts have to be extricated from records extending over some thirteen to twenty years. The liberation of Sainte-Croix took place in 1663, but his friendship with the Marquis dated from 1660 or earlier. The murders in the d'Aubray family, if murders they were, actually occurred between 1667 and 1670, but the process would naturally be gradual if those who planned them were advised by experts. Between 1663 and 1667, Madame attended her father in an illness for which the doctors could find no name, and from 1663 onwards the association of Madame and Gaudin Sainte-Croix continues as an undisputed thing. Thus may the earlier period also lie under suspicion, a period during which crimes might also have been slowly planned. And this suspicion is intensified by the manner in which the two brothers of the Marquise died in 1670 and by what happened after they were gone. Then, only two women stood between Madame and the coveted domains of the d'Aubray family. One was Madame Villarceau d'Aubray, her sister-in-law, a devoted, determined woman. The other was Thérèse d'Aubray, her sister, a pious nun.

There were, indeed, many reasons why Madame Villarceau d'Aubray should bestir herself. She had suspected Sainte-Croix from the first. Steadfastly she pursued a certain course, believing that it was her duty to avenge her father and her brothers. She acted with the help of sharp agents and shrewd advisers. They prepared to act. And yet they acted very slowly. It was not until late in 1672 that they effected the arrest of a servant, La Chaussée, a man who had been introduced as a servant in the d'Aubray family by Sainte-Croix himself. But it was not until 1673 that the Marquise was pursued with a warrant. She disappeared.

She had fled to England. Meanwhile, Sainte-Croix died. Like the alleged victims of all this strange embroglio, he passed mysteriously, unnaturally, out of life, possibly a victim of his own poisons. But of this we have no proof.

The Marquise was not long allowed to remain in this country. Her next refuge was at Liège, then independent, nor always amenable to the diplomatic representations of neighbouring France.

It is not the least perplexing of the incidents in this case that Marie de Brinvilliers remained in the Liège convent for three years with a single companion. Sustenance, to a certain point, she is thought to have had from her sister Thérèse, later to be declared one of her intended victims. Justice in her pursuit, meanwhile, was only half-asleep. When the authorities acted, they had many reasons, beyond securing her condemnation, the necessity of which appealed to them in the interests of the general public and of peace in agitated Paris. So, first by solicitation of the powers at Liège, next by the clever machinery of French detectives, a scheme was evolved to capture the Marquise and bring her back to France. In the disguise of a priest, one of the most astute and fascinating of these detectives obtained admission to the convent, persuaded her to accompany him on a little walk by the river, and then, with others aiding—for no risks were to be taken—seized her person and her effects. This journey to Paris was accomplished under an escort of cavalry. Those effects of hers, thought to be incriminating—many written documents being among them—were now safe in the possession of Desprez, the detective; and he triumphed further by intercepting some letters which Madame wrote on the way. At this stage, Marie de Brinvilliers knew that she must fight for her life. She tried to corrupt her guards with promises. She endeavoured to reach out for assistance, to escape again. The most important of her letters was addressed to one Pennautier. Of course it never reached him. Pennautier was suspected as much as she was. His financial dealings over the Brinvilliers affairs were compatible only with some devious design. Like Glaser, the chemist, he held a public position—in his case, one which involved many dealings with the estates of the clergy, from which he drew financial supplies and dealt with them as a moneylender; and it was generally rumoured that he, too, had some malign part in the organised removal of inconvenient personages. As to Madame's affairs, he might have financed her or her husband in trouble, innocently. But the intercepted appeal to him from the lady served only to bring further suspicion on them both.

After these events, the scene changed to Paris.

The case to be presented against Madame de Brinvilliers now involved a number of individuals, living and dead. Since the earlier events of her life—the doings of Sainte-Croix, the Marquis, Exili, Glaser and others—were not comprised in the final indictment, they can be briefly dismissed. She was accused of the murder of her father and her two brothers and of attempting the life of her sister, Thérèse d'Aubray. But if she was to be convicted, some heed had to be paid to her training as a poisoner, to the guilt of her accomplices, and to the corroborative detail as to acts or character which would convince the world at large of her moral and individual guilt. There were improbabilities still to be accounted for. *Nemo repente turpissimus fuit*. In her defence it was ultimately to be pleaded that she had never been wicked at all. The blame was thrown on others.

Authority, however, was bent on making an example of the Marquise. And so the trial began, in every way destined to prove a most tedious affair—exciting, of course, but intolerably drawn out. And the motive power behind the determination of the police and the fears of the King was still the widow, Madame Villarceau d'Aubray. The great Minister, Colbert, had sound reasons for striving to track down those whose dealings with poison menaced the safety of individual or city or State. And if the sensations of the populace are to be taken into account, a feeling was rife, not merely of insecurity and doubt, but of baffled rage.

It was believed, then, by her accusers, that the training of Marie de Brinvilliers as a poisoner had been a very real thing. After her first association with Sainte-Croix had brought disgrace, though temporary, upon him, she had taken up the benevolent work of attending to patients in the famous hospital of the Hôtel Dieu. Whether the superintendents of the infirmary connived at it or not, the deaths of inconvenient patients were very lightly regarded. Under special tutelage, associated as she was with Glaser and Sainte-Croix, experiments, to which she subsequently confessed, proved the infallibility of the methods of Glaser. For Marie de Brinvilliers came to speak quite casually of a preparation, probably of arsenic, known as "Glaser's receipt." In this period, many patients in the hospital died in agony. It can hardly be doubted that such conscience as she might possess was by

this time wholly deadened. And yet there could be little of these facts or surmises attachable to the indictment which all the force of the law was now prepared to press against her. And we ourselves, in the absence of living witnesses, can only read the documents that have survived with the eyes of probability. Nevertheless, though dead, Sainte-Croix, like La Chaussée, the servant, or Briancourt, the tutor, may still speak quite clearly as to the issues before us. So does the fervent priest, the Abbé Pirot, who brought the highest sacramental influences to bear on the strange psychological problem involved. It was a theological problem, too. In those days, in France, the arraignment came before a Court partly civil, partly ecclesiastical. A wrong against the individual or the community was also a sin. But there were intensely strong persuasions, of a spiritual character, which might either intensify or diminish the powers of a court. Before any conviction could be legally possible, by simple pleading, or by the exercise of casuistry, much might be hidden from the judges which in their secular capacity they might wish to hear.

If the charges of the indictment actually presented against the Marquise were few in number, they were sufficiently dreadful. It was reasonable that they should be concise. The hunting down of the accused had lasted for years. Some measure of admiration may be given to the cleverness which had eluded pursuit, and then, after capture, had used every device to prevent a trial. But between April and July, 1676, the whole matter came to a head.

Triple or quadruple in form under the warrants issued, the affair was really, so the prosecution averred, a single crime when the motive came into the light, for a desire to possess property was at the base of all these acts and attempts.

The prosecution, in fact, went a good deal further than this. We are all fairly familiar with the distinction in French and English law by which the Courts incline on the one side to the guilt of anyone accused, on the other to his innocence. The examining magistrate, in the Brinvilliers case, had evidently a great deal up his sleeve. He anticipated what the presiding officer in an English Court would keep to himself. He was primed with knowledge, which is much the same thing, now and again, as being primed with gossip.

And then his place was taken, with manner more aggressive yet, by the *Procureur-Général*, or Public Prosecutor, who had any number of damaging suggestions to make; worse still, secrets to reveal.

For a long time, in fact during several months, the Marquise had to defend herself. She did not lack resource, energy, or composure. Some things she seemed only too willing to confess. Her embarrassments, for instance. She did not deny her own excursions in the realm of free love. Her caution under any public or semi-public ordeal was only equalled by her incaution when left to herself. Had she not written indiscreet letters on the journey to Paris? Was she not now, in the Conciergerie, a prisoner, still communicating, as far as she could, with possible friends? The net was closing round her. La Chaussée was being put to the torture afresh, after confessing his own guilt. Pennautier, who had tried to escape, as Madame had done, was under arrest. The history of thirteen—nay, more, of twenty—years was being unravelled, Madame Villarceau and many other interested persons actively aiding. The cleverest assistants, experts in crime, students of criminology, catchers of desperadoes, worked incessantly in this one cause. In so doing they were working against poisoners at large. No doubt their name was legion.

The prisoner, from now onward, is seen to be alone. La Chaussée, it is true, passes out of the story, like Exili, Glaser, Pennautier: the first by death, the others tainted, but personally unscathed. La Chaussée, however, even under torture, refuses to implicate Madame. Sainte-Croix, a dead man, is far more deeply implicated as an accomplice of hers. It is his voice that rings more loudly than any other, right through to the very end.

But the Marquise had to be confronted by some very necessary witnesses. Naturally, the most important of these were men and women who had been in her own service. They were creatures for the most part of quite trivial reputation, and if the servants of the d'Aubray family, who were also called, showed a bias half-natural, half-instructed, this is not to be wondered at. One witness, however, was of different calibre, the tutor, Jean Briancourt. He too had been arrested for complicity. His appointment in the de Brinvilliers family had begun in the lifetime of the last of the brothers. He



WILLIAM COBBETT

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THE MARCHIONESS DE BRINVILLIERS  
upbraided by Gaudin St Croix.

counsellor d'Aubray. It might be doubted if he ever came in personal contact with him, but it was certain that he must have known a great deal about him. His own intimacy with the Marquise had been of a very peculiar kind. He had come to govern her children. He had remained for her to govern him. Facts now came to be discovered which gave him, though weak, considerable credit as a man. He showed some moral courage when confronted as a hostile witness with Madame herself in her most cunning and confident mood. She had answered the common witness glibly enough. Now a greater boldness was needed, and she was not found wanting here. The man and the woman went for each other with bitter repartees.

That the house into which he had been introduced was one of jealousy, intrigue, and death these duellists in words took mutual pains to prove. Briancourt explained to the Court what was the nature of his own remorse in playing such part as he had played, in concealing danger to others, which was all he knew of the truth. It was only now, trained as he was to the law, a barrister, an officer himself of the Court, that truth appeared absolute and paramount in its claim upon him as a man of honour. He told how he had played a man's part, as far as he could, in the midst of jealous scenes. Between 1670 and 1672 he had discovered the villainies of Sainte-Croix. He did not pretend that either he or the notorious Gaudin could secure any fidelity on the part of the Marquise. Frankly, they were rivals with another man, the Marquis de Nadaillac, for her favours. Briancourt alone attempted to check her career of secret crime. Yet she had persuaded him, cajoled him, made him her slave, so that he had abandoned even honour for her sake. He had, indeed, at length quitted her house, realising her guilt in its fullest horror, yet unable to avert any doom from any possible victim.

Briancourt rendered other testimony. He showed up the equivocal position of the husband, with Sainte-Croix still dancing attendance. He recounted how Madame had brought the news of her younger brother's death from his home, where she had attended him in his last days. He learned from her own lips how the deaths of all her family had been designed and carried out. She had admitted her full share in these crimes to him. And now he opposed her in the Court, with this—her own confession.



Madame retorted against each point by a vigorous denial. Briancourt she denounced to his face as a dissolute rogue. Physically strong and brilliant, mentally alert and daring, she succeeded in throwing doubt on some of the tutor's assertions, and these were searchingly tested by the judges, with every show of strict impartiality. But they had heard too much, and they knew too much, to find in what Briancourt now told them anything but the last straw of proof requisite for the condemnation of the Marquise. His personality had impressed the Court. His sense of shame had convinced them. It was clear, after Briancourt's evidence was closed, that the Marquise would be condemned.

But the judges had yet to consider a defence which had been presented to them in legal form. At what time it was delivered to them it is impossible to say. Framed by one of the most ingenious lawyers of the day, this powerful plea has come down to us in its entirety. It was known as a *factum*. Its lightest contentions are of some value. Its weightiest almost persuade the mind that the condemnation of Marie de Brinvilliers may have had a flaw in it. The whole thing is a masterpiece of pleading.

Maître Nivelles did not deny that the unfortunate Marquise had lost her relatives amazingly. But a poisoner? A deliberate murderess? Why, her position, character, goodness, education—admitting some waywardness or imprudence—were in themselves presumptive proofs in her favour.

Imprudence, yes, as regards Sainte-Croix, that consummate villain, the real perpetrator of these murders—yes, such must be admitted. But here observe the contention which lay at the root of the charge against Madame. She would profit. How could she possibly profit? Her embarrassments would prevent this. Nothing, in fact, could be worse for her than a change in the succession. If she came near to profiting, the rights of Madame Villarceau d'Aubray alone, because of her dowry, would stand in the light.

Maître Nivelles never denied that the deaths in question were murders. He was only concerned to defend the woman accused by showing where the blame really lay. The casket, the letters, left behind by Sainte-Croix, whatever they contained, were nothing whatever to do with Madame. There had been a plot, a series of plots, for his own advantage, engineered by Sainte-Croix, who had attained to a power over

the Marquise of such a kind as to blind her to the very nature of his secret work. It was not denied that by means of this power Sainte-Croix might have hoped to gain ultimate control of some property, but if he thought he would obtain much, he had only deceived himself. His deception of an unsuspecting and—as to men—a defenceless woman, was of another sort altogether. Here she would not admit to guilt, only to weakness. She had herself found no happiness in marriage. She had not thrown her bonnet over the mills without provocation. Her whole proceedings, in connection with Sainte-Croix, had been those of a woman fascinated, bemused. So, with a further denunciation of Sainte-Croix, in which he appeared as a poisoner notorious as well as self-confessed, Maître Nivelles quitted this part of the case.

It was said that Madame had fled. What of that? Were not her embarrassments, her debts, incurred for her by others, a sufficient cause for her distracted state of mind? Fear alone had prompted her flight. It was flight from worry, anxiety, distress, occasioned by the persecution of creditors. Never had it been a flight from justice. She had made no other admission. A confession, indeed, might be wrung from an individual by fear, but to that they were not yet come. They had before them, indeed, the confession of one La Chaussée, that miserable servant, paid by Sainte-Croix. Even under torture, no admission affecting Madame had escaped his lips. This was worth analysing. A confession might at last become of value if, in spite of such terrible pressure, the innocence of another was the final thing declared.

It was obvious, then, that nothing had so far been adduced in any way relevant to the supposed crimes of the Marquise. These assumptions, the just and noble judges, on reflection, would dismiss. And what could be said further of the evidence? Worthless, as against her, all of it, because of the character or the motives of those who brought it forward. Drunkards, dissolute persons, prejudiced menials, paid informers. What most of these accusers had said resolved itself into speculations about poisons and caskets, suitable only as trimmings of some spurious romance.

In spite of what Maître Nivelles had put forward on the subject of confessions, it was to confessions that he had to devote the latter part of his appeal. He dealt at great length

on the seizure at Liège, denouncing it. Desprez, the pseudo-priest, had, in fact, at this time secured a confession, and this was in Madame's own handwriting. This document was one of the strangest that had ever come before a court of law, and he was prepared to submit that it was just the kind of document that a court of law should not consider. The venial offences of childhood were written here. Disorder of life, as conceived by religious minds, was frankly written here also. Then followed self-accusations, poignant but utterly unconvincing. They were a full catalogue of cruel and criminal offences: "I accuse myself of having poisoned my father, through a servant." "My two brothers I poisoned, and a servant was broken on the wheel for this." "I attempted many times to poison others of my relatives, women and men, and even one of my children, but of this last act I repented." "I admit my intrigues with Sainte-Croix and others, but I assert the activity of Sainte-Croix and his helpers in all that was done." "I desired the possessions of others of my family in order to set my estate in order." "I make this confession to God, and to you, my father, under seal."

Such was the paper found at Liège, produced triumphantly by Desprez, and now derided by Maître Nivelles. It is a classic among the revelations of criminals. But here a solemn, exclusive, sacramental privilege was pleaded. "I confess to God, and to you, my father." The confession surely broke down. Sacred custom and observance demanded that nobody—least of all a Court steeped in ecclesiastical tradition, should recognise it or even read it. But then, suppose that it were read, and then without prejudice? Look at the improbability of the thing—the sheer improbability. What did they really behold in a woman who could thus accuse herself? Those self-accusations would never hold against her. But they could be explained.

At this point Maître Nivelles pressed, alternatively, theories of the ridiculous and the hysterical. Facing the errors of her life, an exaggerated sense of the sins she believed herself to have committed, combined with the hatred by which she knew herself encompassed, had induced this complete morbidity of soul on the part of the Marquise. It was impossible to believe what was here asserted. Women, especially, were subject to hysteria in many different forms. This woman threw herself on the Court, asked for protection, even against

herself. They, by their piety, in the exercise of their discretion, and in the cause of truth, would clear her of all stain, save her family honour. And their probity, as judges, would be transmitted to admiring ages.

The judges ignored the *factum* and pronounced judgment of death. They found the Marquise guilty of poisoning her father and her two brothers and of attempting to poison her sister. They ordered that she should perform a public act of penance, that her property should be forfeited, wherever possible, to those whom she had wronged, and further charged it with heavy fines to Church and State. She was to submit to torture, in order that the names of all her accomplices might be revealed, and then she was to suffer execution in the public market-place. Her body was to be burnt. The ashes were to be scattered to the winds.

The whole of this tremendous sentence was carried out during the five days which followed. How far the ordeal of torture was undergone will never be known, but it was believed to have been faced and to have been without result. An astonishing resolution was shown not to involve others further in the crimes that had been committed. The rumour spread that Marie de Brinvilliers was proving herself a heroine. Her penitence shone, contrasted with the cynicism of those who had gone before her. They had been unrepentant. In her prison, indeed, the Marquise was persuaded to listen to the counsels of a noble priest, the Abbé Pirot. And so she met her fate.

All Paris was astir when the execution took place. This happened on 17th July, 1676. If precautions had not been taken, after penance had been accomplished at the porch of Notre Dame, the crowd would have torn their victim to pieces. But the tumbril was adequately guarded. Her end, after accepting the consolations of religion, she faced with calm. The body was taken through the Place de Grève and burnt. The ashes were thrown into the river, as decreed, and Paris felt relieved. The trial had filled the whole city with unspeakable fears. Safety, in all classes, was involved in the satisfaction of that justice which had closed the life of the Marquise de Brinvilliers.

And yet, was justice done?

The judgment of an age remote from our own has some

attraction, but carries no impression of infallibility with it. Few trials exhibit more clearly the divergence between the customs of French and English law than this, and the difference is one rather of custom than of principle. The judges of Madame de Brinvilliers were her accusers, and they disclosed much that they knew during a long process which held her at a certain disadvantage. But this is done, in criminal proceedings, in different ways, the world over. The vengeance which they exacted, believing this to be necessary in the public interest, lacked nothing in brutality. But our own law, at that date, was quite as fierce in its terrors, and the same publicity attended its enactment. Though we committed ourselves to a preference for the jury system, our police are allowed to reveal the past history of any convicted criminal at the suitable moment. In France, such revelations have been generally allowed while the proceedings pend, and it is manifest to all who have read the documents that here the culprit was condemned in advance.

The last word in such a case may well rest with the professors of ethics or of religion. In psychology, Marie du Brinvilliers may be dismissed as the victim of her own nature, but more still of the stronger influence of the man Sainte-Croix, for under this she most undoubtedly came. These two are to be regarded as collusive criminals the one as wicked as the other. The temperament which succeeds in blinding the eyes and the mind to human suffering is not unknown at this day. Poisoners are comparatively rare in this country, but their race is not extinct, nor is their insensibility a thing that we can disregard altogether. A poisoner may still go through life undetected, not so insensible to his success but that he may rejoice in it.

For a time, success of this questionable kind attended the Marquise de Brinvilliers. It is something that she met her doom courageously, that she showed some remorse under priestly persuasion, and perhaps there may be some faint satisfaction in the pity which afterwards arose even for her. Her penalty should have been shared, it was thought, by others. But the rough and exemplary forms of justice, thus vindicated, had their uses, in a day which needed an example. Living in that day, we should have agreed with the decision of the judges, and have breathed more freely, had we been English or French, when the scene in the Place de Grève was over.

*Lardner*



## LANDRU

**L**ANDRU was arrested in April, 1919. He was suspected of murder, and it was alleged that he had possessed himself of ten women and their property and then made away with them. The war was just over, and the world was only too well acquainted with death and the loss of property. Yet his case excited great popular interest and is still remembered. Some part of this interest must have been due to the reaction after the war. Landru was a murderer of the times of peace, and his arrest was an assurance that the war was over; much as the relief of the shipwrecked sailor who, seeing a gallows as he struggled ashore, thanked God that he was in a civilised country.

The proceedings against Landru were, however, more than a mere indication that France was herself again. There was the matter of sex, always a complication which excites attention in any proceeding. The impudence and wit of the man, coupled with his determined refusal to give any information about the charges—and that refusal is rarely found in criminals subjected to the refined methods of interrogation in France—the multitude of women whom he had betrayed and robbed, and the fact that his method of destroying the evidence of his crimes left the very question whether there were any murders at all a matter of doubt: all these circumstances combined to focus, and keep focused, public attention upon Landru during the two and a half years that elapsed between his arrest and his execution.

What manner of man was this murderer? He was born, as such men usually are, of respectable parents. They were poor people living in Paris, where he was born in 1869 and lived an undistinguished life until 1904. He had the usual education. He had been a chorister and server at his parish church. As a conscript he had done well, and rose to the rank of sergeant. He married and had a family. He earned his living somewhat precariously in garages and the second-hand furniture trade.



In bodily appearance he seemed, in 1919, hardly adapted for the role of seducer. He was short and dark, with a bald head and ample black beard just streaked with grey. But his manner was insinuating and his words plausible. No doubt a man cleverer than his neighbours on the surface, but lacking in solid worth, is naturally tempted to employ his glib tongue in making easy money. At all events, Landru succumbed, and on 21st July, 1904, there was recorded his first sentence for swindling. Four more followed, the last being one of four years on 20th July, 1914. He was therefore in prison when the war broke out.

We are not told how it came about that in six months or so he was free again. We may conjecture that the ex-sergeant was released in order to join the French army, but during the war he seems to have wandered about in a motor-car, living at various addresses, mostly in Paris, and no one seems to have made it his business to inquire into Landru's absence from military service.

In any case, it was found that early in 1915 he was engaged in a profitable and easy form of crime. He had in some way acquired a car and the knowledge how to get petrol for private use. His experience in garages and his appearance of running one or two would no doubt enable him to do this. The work he had done in the second-hand furniture trade had probably taught him that there was a class of women, middle-aged widows for the most part, who were accustomed to act on the advice of their husbands or relatives and were forced both to retrench and to contemplate a lonely and penurious old age. Such women were hard to do business with. They knew prices and their need was great. To buy from them did not mean easy money or large profits.

On the other hand, their firm front was easy to turn. The fear of poverty and loneliness would make them peculiarly accessible to the approaches of a man who promised them ease and protection. To such a man they would readily trust themselves and their poor belongings. And if he betrayed that trust then they were peculiarly helpless. To publish to the world their losses would also reveal their shame and their folly.

Thus to prey on lonely widows and spinsters is not unknown. Many have practised the art, and it has to such criminals the advantage that they can also cheaply and safely

gratify their lust. And thus it came about that in the four years of the war nearly three hundred Frenchwomen succumbed to the wiles of Landru.

It has been assumed that he was subject to some form of blood lust which impelled him to murder his victims. There seems to be no real evidence of that. A man who embarks on this kind of adventure must shake himself free from entanglement. He must also speedily possess himself of the goods which his real object is to obtain. It is therefore inevitable that a proportion of the women would be difficult to shake off and some must have shown no great disposition to hand over their property. The obvious means of overcoming their attachment or reluctance when trickery and evasion failed was to destroy them, and to do so is unfortunately only too easy. With one exception, Landru's murders can be attributed to his desire for his victim's fortunes. We must therefore postulate that he was callous and inhuman—an assumption which offers us no difficulty, seeing that his very mode of life was impossible for any other kind of man.

The one exception was the nineteen-year-old maidservant Andrée Babelay. She had nothing in the world, but her one adventure, the visit to Landru's fatal Villa, ended her life. Even in her case one may assume that, like Bluebeard's wife, she had surprised his guilty secret and so had to die.

His arrest came about through the wit of a woman, who was seeking a sister who had met Landru and had not been heard of since she departed with him. It was the usual story. Mme Buisson was a widow with a small boy. She read in a paper a matrimonial advertisement from a M. Fremiet. They met and eventually went away, leaving the child in the care of his aunt, Mlle Lacoste. No more was heard of her. Two years after her departure the child died and Mlle Lacoste urgently desired to break the news to her sister. She did not know where to seek.

Suddenly she remembered that Mme Buisson had once whispered to her that she and her lover were going to stay at his house, Villa Ermitage, at Gambais, near the Forest of Rambouillet. It was a great secret. Perhaps that was where she was now. She at once wrote to the Maire, who replied that the tenant was a M. Dupont, and he added that the relatives of a Mme Colomb had also inquired about her, saying that she had been at Villa Ermitage. The police were

communicated with, but they could not find M. Dupont or M. Fremiet or M. Diard, for Landru used innumerable aliases. It is, however, strange that Landru, this short, bald, bearded, loquacious man, known to the police, who was moving about in Paris, though under different names and at different addresses, escaped their notice.

Mlle Lacoste did not lose heart. On 12th April, 1919, her long search was rewarded. She had seen the man in her sister's presence, so she knew whom to look for. On this day in the rue de Rivoli she saw him and followed. He went into a shop. She waited. He came out and she again followed, but lost him in the crowd. She did not hesitate to seize the one chance left. She went into the shop and found that M. Guillet, an engineer, living at 76, rue de Rochechouart, had bought a white-and-gold dinner-set, which was to be sent to him. He never received it, for Mlle Lacoste at once hurried to the police. They sent to the address and there found M. and Mme Guillet. In a short time the pair were revealed as Landru and his mistress, a sometime actress named Fernande Segret. They were arrested, but the woman was soon released. Landru was detained.

What was the charge? Obviously he was suspected of murder. But in order to charge a man with that crime, there must at least be some evidence in support. It was comparatively easy to unmask Landru as a swindler who had betrayed and robbed many women. Every day fresh frauds came to light. But no corpse and no evidence of one. All that the police knew was that three women had at various times been in his company and thereafter were seen no more.

Upon him was found a cheap little memorandum book bound in shiny black, such as can be bought anywhere for a few pence. In it Landru had made many careful notes of his expenses. On one page was an entry:

"A. Cuchet. G. Cuchet. Bresil. Crozatier. Havre. Ct. Buisson. A. Colomb. Andrée Babelay. M. Louis Jaume. A. Pascal. M. Thr. Mercadier."

Now the police knew that Mme. Cuchet and her son were missing and so, too, were Mmes. Buisson and Colomb. Was this a list of victims. If so, who were the other seven?

The police set themselves to solve this problem. Gradually they established that each of the other seven was a woman who had met Landru under a project of marriage and then had

been seen no more. But their utmost efforts did not discover a single dead body.

The stories of the seven were very similar. The earliest to be identified was the last victim, Marie Thérèse Marchadier. In January, 1918, she was thirty-eight. She had been known in many a garrison town, where she frequented the society of non-commissioned officers, as "La Belle Mythese." She had retired to a dignified obscurity in Paris and was living there when, towards the end of 1918, an advertisement that she had furniture to sell brought Landru to her. The acquaintance became closer, and on 9th January, 1919, she had arrived at Gambais. The villagers remembered her and her two griffons. They could not remember whether it was the 13th or the 14th of that month that they saw her last. Landru had possessed himself of her goods, but the police could not discover her. But they dug up the bones of the dogs in the garden at Gambais.

Starting from the word "Bresil," the police identified Mme. Laborde Line, a widow, who had been missing since 10th July, 1915. She had been negotiating marriage with a charming engineer from Brazil, but the consular and legal difficulties were so great that she decided to dispense with the ceremony. The pair left together. Afterwards the man came back alone and took away Madame's furniture. The neighbours identified him—it was Landru.

Mme. Cuchet and her son had disappeared at Vernouillet early in 1915. She was living with a M. Raymond Diard—again identified as Landru.

"A. Pascal" was Mme. Annette Pascal, a woman of thirty-three. She disappeared at Gambais in April, 1918. Mme. Guillain was a widow of fifty-one. She had last been seen at Vernouillet in August, 1915. "M. Louis Jaume" proved to be Louise Leopoldine Jaume, who had been lost since 1st September, 1917. There was a Mme Heon who disappeared in 1915.

Lastly, there was Andrée Babelay, a young servant maid of nineteen. She had no means, and consequently, in her case, unlike the others, Landru had nothing to obtain by her death. On 11th March, 1917, she obtained leave to visit her mother. Instead, she accompanied Landru to the Villa at Gambais. How they met and by what arts he enticed her there we do not know. Why had she to die? Was it because, having had

his way with her, he found that he could not shake her off? Or had she, as I say, like Bluebeard's wife, surprised his secret?

The police worked hard. They searched the houses at Gambais and Vernouillet again and again. They dug and redug the gardens. They sought for means whereby bodies could be destroyed. The villagers at Gambais had spoken of occasions when noxious smells of burning had come from the Villa. The kitchen stove was inspected and became famous. The experts tried to consume a leg of mutton in it and only succeeded in suffocating themselves. But the search revealed many fragments of bones, and from them the experts sorted out pieces which they were prepared to swear were of human origin and belonged to three individuals at least. Moreover, the cinders and ashes contained metal objects which obviously were such as are used to fasten women's garments.

All this took a long while, and for two and a half years Landru remained in custody. At first he was sent to Nantes, but he was soon sent back to Paris, and his case was entrusted to M. Bonin, one of the ablest of the French examining magistrates. In France the system of interrogating an accused person is in force. It seems strange to Englishmen who have been brought up under the principles established in 1848, but it would not have seemed so strange to our ancestors. The old criminal records show that accused persons were regularly interrogated both before and during their trial.

M. Bonin followed the accustomed plan. As the police unearthed new facts, so he put them to Landru and asked for his explanations. It was in the course of these proceedings that Landru became a favourite. Many a prisoner has taken up the line, perfectly legitimate, that he will say nothing. Few, however, are found with the strength of mind to maintain their reserve. But Landru did. For whole days his answers simply were, "I have nothing to say," and the magistrate was forced to remand him. What was worse was that when he did say anything, his answers, by their plausible impudence or comic inconsequence, excited public merriment. When asked about his relations with these women, he replied, "I am a gallant man and will say nothing." Again, "I cannot think of revealing the nature of my relations with Mme Guillain without that lady's permission." When the magistrate turned

his attention to other swindles, for Landru had not neglected the profitable occupation of defrauding demobilised soldiers of their gratuities, Landru justified taking a certain man's money and then dismissing him on the high moral ground that he thought the man was married and had discovered that the woman was only a mistress. From one who had dallied with 300 mistresses the answer is impudent enough to be extremely amusing. Again, one day Landru was confronted with a witness who gave damaging evidence as to his relations with one of the victims. The magistrate noticed that his prisoner looked perturbed and taxed him with it. Landru admitted that he was ashamed. By the indiscretion of the witness his wife would now learn of his infidelity. And that wife was actively claiming a divorce on this very ground, as Landru and everyone else well knew.

At last the inquiries were ended and the magistrate made up the records and committed the accused for trial. Thus, in November, 1921, Landru appeared at the Assizes at Versailles charged with eleven murders.

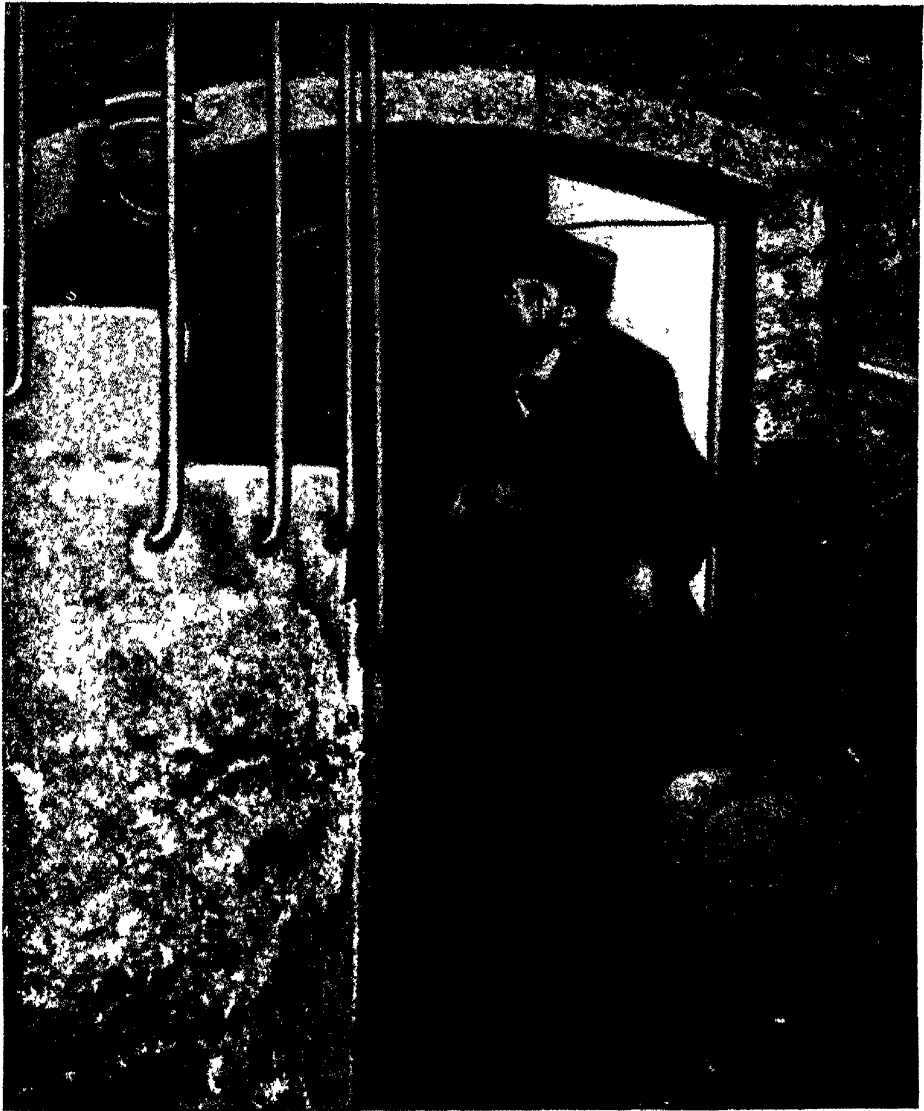
The Presiding Judge was M. Gilbert, acute but gentle, precise but polite. M. Godefroy, the Advocate-General, led for the prosecution. Me. Lagasse was briefed for a *partie civile*, the relatives of Annette Pascal. French procedure allows claims for damages to be put forward at a criminal trial, which accounts for his presence. His role during the evidence seemed to be to draw the fire of the redoubtable Me. Moro-Giafferi, who appeared as leading counsel for the defence. Me. Moro-Giafferi's name is well known in England. His methods are more vigorous and more emotional than those to which we in England are accustomed. But French procedure differs from ours. The long interrogatory of the prisoner, conducted by the Presiding Judge, necessarily tends to produce an impression that the accused must be guilty. In order to dispel that impression the defence must be vigorous. By collisions with the judge and opposing counsel, it is possible to gain the sympathy of the jury, and, having gained and kept that sympathy, it is often essential in the final speech to sweep them off their feet so that their final consideration of the verdict shall be under the influence of an irresistible appeal. Me. Moro-Giafferi is fiery and eloquent. He exerts himself to the last ounce of his bodily strength in his client's cause.

French procedure in the respect I have mentioned does seem to favour the prosecution, but in matters of evidence and argument that procedure is far more favourable to the accused than ours. Within certain wide limits, counsel may appeal to the passions and prejudices of the jury in a way which we find difficult to understand. I am not seeking to compare or appraise the merits of the two systems, but merely to emphasise the fact that they do differ. English juries have been known to go wrong and even English judges are human beings.

Landru commenced the trial in apparent good health and spirits, but as the long trial went on he visibly flagged. His tactics were the same as before. He would not answer, or, if he did, then he was irrelevant or impudent. He rarely made a statement of fact, and whenever he did it was a tactical mistake; the prosecution were able to refute it. In fact it is not always wise for a prisoner to leave the prosecution to prove their case. Where explanations are obviously needed, unless an unfavourable inference is to be drawn, the failure to afford these explanations—still more the air of trifling with the grave points made against the prisoner—will tend to confirm the inference. If the evidence for the prosecution is weak, then it may be the best thing to let it do its worst. But once a *prima facie* case is made out, an insistence on the duty of the prosecution to make out a completed case may amount to a refusal to give an account by way of exculpation which alone can avert an unfavourable verdict.

Landru pleased the large fashionable audience, but the jury were the persons to convince. Some of his replies were apt. In dealing with the memorandum book, he said sarcastically, "Perhaps the police would have preferred to find on page 1 an entry in these words: 'I, the undersigned, confess that I have murdered the ten women whose names are herein set out.'"

His reply to the comment that they had all vanished was, "And are there no others who have also disappeared without anyone being accused of their death?" As to his relations with them, "The ladies whom you call my fiancées knew what they were about, seeing that they were all—(a pause)—of age." Often when pressed by a question which assumed his guilt, he burst out that he knew they wanted his head: the pity was that he had not more than one for them to take. But his replies convinced the onlookers that he was a clever, scheming man: his evasions; his quickness in



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LANDRU  
waiting in his cell at Versailles for the verdict of the jury.

*See page 557*





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# LANDRU'S GARDEN

Examining remains of bones,

APR 1934

